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STANDING COMMITTEE ON GENERAL GOVERNMENT
ASSESSMENT AMENDMENT ACT
THURSDAY, NOVEMBER 13, 1986



STANDING COMMITTEE ON GENERAL GOVERNMENT

CHAIRMAN: McCague, G. R. (Dufferin-Simcoe PC)
Fontaine, R., (Cochrane North L)
Grier, R. A. (Lakeshore NDP)
Guindon, L. B. (Cornwall PC)
Henderson, D. J. (Humber L)
Lane, J. G. (Algoma-Manitoulin PC)
McKessock, R. (Grey L)
Pollock, J. (Hastings-Peterborough PC)
Sargent, E. C. (Grey-Bruce L)
Sterling, N. W. (Carleton-Grenville PC)
Swart, M. L. (Welland-Thorold NDP)

Substitutions:

Ferraro, R. E. (Wellington South L) for Mr. Fontaine
South, L. (Frontenac-Addington L) for Mr. Henderson

Also taking part:

Epp, H. A. (Waterloo North L)

Clerk: Deller, D.

Witnesses:

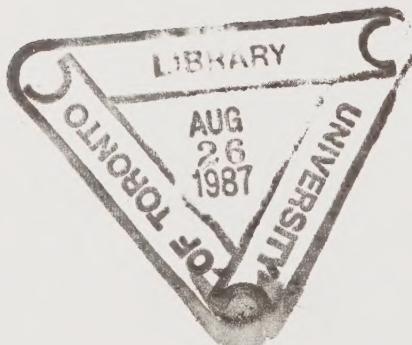
From the Canadian Property Tax Agents Association Inc.:
Maybee, W., Chairman, Toronto Chapter

From the Bill 131 Committee:

Blundell, B.

From the Ministry of Revenue:

Lettner, W. J., Assistant Deputy Minister, Property Assessment Program



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday, November 13, 1986

The committee resumed at 3:37 p.m. in room 228.

ASSESSMENT AMENDMENT ACT

Consideration of Bill 131, An Act to amend the Assessment Act.

Mr. Chairman: We are meeting this afternoon to start a series of public hearings on Bill 131.

I would like to thank the Canadian Property Tax Agents Association Inc., particularly Wayne Maybee, chairman of the Toronto chapter, for coming today on very short notice. If he would like to take a chair at the mike, we will be pleased to hear from him.

Mr. Maybee: Thank you very much. I would like to introduce two other members of our Bill 131 committee who are here as well today, Brian Blundell on my immediate right and Donald Gerrard.

Mr. Sargent: What do they do?

Mr. Chairman: There is a letter in your file that tells you, but I am sure Mr. Maybee is going to tell us what they do.

CANADIAN PROPERTY TAX AGENTS ASSOCIATION INC.

Mr. Maybee: We are a body of, for the most part, corporate members, who spend most of their time concerned with legislation policy, assessment acts and administering property tax for corporations across Canada. We have submitted a list of our members to the chairman.

We are addressing the issue today strictly from the viewpoint of the Toronto chapter of the Canadian Property Tax Agents Association. We have some concerns and we have submitted a letter to the chairman. I believe you all have copies. Probably, like everyone else at this time of year, you have not had a chance to read our submission yet. Perhaps now is a good time to go over our submission. I do not think I need to spend a great deal of time; I will address it as quickly as possible.

I refer to our letter of November 12, addressed to the chairman, care of Deborah Deller. It states: "We would like to briefly introduce the Canadian Property Tax Agents Association to your committee. The Canadian Property Tax Agents Association is a national association concerned with assessment legislation and policy across Canada. Our membership depicts representation from major Canadian corporations, financial institutions and various levels of government. A list of member companies and agencies is appended.

"As chairman of the Toronto chapter of the Canadian Property Tax Agents Association, I respectfully submit our recommendations having reference to the suggested amendments set out in Bill 131.

"Our concerns have been limited to general commentary, as many of our member companies will be submitting specific briefs and recommendations having reference to the suggested amendments which could impact upon their respective businesses or agencies.

"We would like to reinforce that we favour the principles of maintaining the current assessment bases and preventing future erosion as a desirable objective. Our concerns, however, are addressed to the practical application of working on a day-to-day basis with the amendments as they are currently drafted. Our concerns and recommendations have been drawn from committee members having considerable knowledge of various provincial assessments acts."

Our submission is very brief and of a general nature, but we would like to go on record as having taken some time to express our concerns.

Section 1 of the bill proposes to add the following clause to section 1 of the Assessment Act:

"(ca) 'business' includes any business activity whether or not such activity produces, or is intended to produce, a profit."

Our concern is that the above-referenced wording is too vague and fails to define a business. We fear that, at a future date, the wording could be used as support in the expansion of the business assessment base. It is felt that the assessor lacks direction with the proposed definition of a business. We feel it just does not go far enough.

We recommend that the bill could cite the specific businesses for which the amendment was targeted. It could do that. The citing of the specific businesses would assure that the business assessment base is not subjected to expansionary pressures. We understand why the definition was put in, but we would prefer that examples of the businesses be cited.

We are not commenting on the appropriateness of applying business assessments to any particular company or organization. We are, however, suggesting it would be less confusing and more expedient for the minister to cite any organizations or companies deemed to be subject to business assessment, rather than to introduce a vague definition of a business.

Section 2 proposes that paragraph 17 of section 3 of the act be amended as follows:

"(a) The exemption from taxation under this paragraph does not apply to a building or structure or any part of a building or structure, notwithstanding that it forms an integral part of manufacturing or farming machinery or equipment, or of a manufacturing process or farming operation."

This clause is unacceptable. The word "notwithstanding" weakens or could negate the historical integration test applied to buildings and structures used as an integral part of manufacturing or farming. For the past 40 years, the courts have upheld the integration principle.

We do not have a problem with the taxation of buildings or structures used for storage. This concept has been accepted in the courts, as depicted in the St. Lawrence Cement decision, which ruled that pack house silos were taxable. The proposed clause could in future years be used by municipalities to force the assessor to expand the assessment base beyond the intent of Bill 131.

We recommend that this section of the Assessment Act be left alone. The clause to amend paragraph 17 of section 3 should be deleted. We feel the present wording supported by case history is reasonable.

We would like to stress at this point that many of our member corporations will be addressing in more detail specific problems with the proposed amendment. Probably in the next couple of weeks, you will have numerous presentations concerning that part of the proposed bill.

We have a concern with the proposal to add paragraph 23 to section 3 of the Assessment Act. Briefly stated, the paragraph would allow exemption to "roller coasters, monorails, slides," etc., "or other similar mechanical amusement devices...affixed to land occupied by the operator of an amusement park." We find the wording "operator of an amusement park" creates further confusion.

If this paragraph is added to section 3, would it exempt such rides located in shopping centres, e.g., the Ghermezians and the West Edmonton Mall? Would such operations as garden centres with amusement areas be exempt from taxation? There appears to be an unfair consideration with the specific exemption, and it appears to be discriminatory.

Recommendation: The definition of an amusement park must be clearly defined, and it should be decided if it is the operator or the owner of the property who will receive the proposed exemptions.

We are not taking a side on the issue, but it is a point that could lead to further confusion, in our opinion.

Section 3 is a follow-up to the proposed exemption. It is proposed that for each of the years 1987, 1988 and 1989, the Minister of Municipal Affairs may make grants to compensate a municipality for loss of tax revenue resulting from the proposed exemption with the introduction of paragraph 23 of section 3.

The concern here is that this clause does not appear to be sensitive to the actual loss of revenues generated in future years. In our opinion, the grants would not be equivalent to the loss in revenue.

Recommendation: The grants could be structured to offset 100 per cent of the loss in revenue to the respective municipality due to the exemptions.

In summary, our concerns and recommendations have been restricted solely to Bill 131. We are of the opinion that the Assessment Act needs to be updated or revised and that the real problem lies within the act. That said, we support the principle of market value assessment.

As an association dealing with assessment matters, we welcome any opportunity to assist the government in any future revision of the Assessment Act.

Mr. Pollock: I notice here that roller coasters, monorails and slides are exempt. If they charge for them, why are these amusement facilities exempt?

Mr. Maybee: It is only under the proposed legislation that they would be exempt.

Mr. Pollock: That is right; they are exempt under the proposed legislation.

Mr. Maybee: If the proposed legislation were carried and came into force, it is my understanding they would be exempt.

Mr. Pollock: Even if they charge for people to use these rides.

Mr. Maybee: That is my understanding. They would be valued and probably assessed as properties on a cost approach rather than on an income approach.

Mr. Chairman: Excuse me, but the question is probably more appropriately addressed to Mr. Epp, who is carrying the bill for the Minister of Revenue (Mr. Nixon). We may come to that later in clause-by-clause consideration.

Mr. Sargent: What do you charge a business to be a member of your association?

Mr. Maybee: A lot of money. No. I forget. It is something like \$110. It is cheap.

Mr. Blundell: It is about \$250 or \$300 this year.

Mr. Sargent: What kind of profit did you make last year?

Mr. Maybee: You want to catch us. We do not make a profit. We have a very small balance in a bank account.

Mr. Sargent: You have 200 firms here paying \$300. That is a lot of money.

15:50

Mr. Maybee: We have a national office and we have an administrative staff. We have a full-time staff.

Mr. Sargent: Do you have a budget?

Mr. Maybee: We have a budget.

Mr. Chairman: As the Speaker might say, Mr. Sargent, I am not sure you are addressing the spirit of Bill 131.

Mr. Sargent: I am trying to find out. Are these guys paid guns for industry to knock the hell out of the poor retailer or what?

Mr. Maybee: Let us put it this way, we are at the lower level of our corporate hierarchy. Mr. Poole reminded me that we do spend a lot of money on educational programs for our members.

Mr. Sargent: To keep them informed of the trends?

Mr. Maybee: Sure, and we have publications we send out to our membership keeping them abreast of changes in assessment, methodology and current court cases.

Mr. Sargent: Is this a current practice to come before the committee of the Legislature on a bill? Is this your first appearance here?

Mr. Maybee: It certainly is not the first appearance of the Canadian Property Tax Agents Association. It is my first personal appearance.

Mr. Sargent: I have never seen them coming up to a bill like this.

Mr. Maybee: I cannot really answer that. We seem to have addressed other bills. I know we have looked at other proposals. I can recall one with exemptions for farm tax that we were involved in.

Mrs. Grier: I wanted to understand more clearly your first point about the definition of business being too wide. I confess to not being familiar with the actual wording of the Assessment Act. What strikes me from your suggestion is, are we not merely expanding the problem? When you say instead of saying business to cite examples, are we then not going to be into a discussion of the criteria upon which you choose examples and the definitions of the actual nature of the business that we have put in as an example? How do you see that working?

Mr. Maybee: No matter which way you go, you are going to create problems. Probably, if you cite these specific businesses you wish to include in your business assessment net, at least you are only going to have to address X number of problems. By leaving it vague, as in the term "business activity," that is going to create a multitude of problems.

Mrs. Grier: If we use the term "amusement business," are we not just opening up a whole wider set of questions to be answered?

Mr. Maybee: I cannot suggest the words. I cannot recommend the best wording. I agree that it is a very difficult piece of legislation. I could not begin, if I had the authority, to recommend the wording of the legislation. All we are doing is citing what we see to be problems.

Mr. Gregory: I wonder about the paragraph where you say you have no real objection or problem with the structures used for storage being taxed. Are you including co-operatives in that?

Mr. Maybee: I would not want to cite types of business. All we are saying is that if a structure is used for storage in the manufacturing process--

Mr. Gregory: Why do you make that distinction? Is it strictly on the basis of--

Mr. Maybee: Of the courts.

Mr. Gregory: --what is accepted in the courts in the past?

Mr. Maybee: Historically. We do not have a problem with that.

Mr. Gregory: You do not have a problem, but probably the people who own them do.

Mr. Maybee: There would be some cases, I am sure, where there would be some problems, but this is a general brush stroke of the concept. The

courts have accepted that to date and we would accept that to date as a group. I am not saying there would not be individual cases.

Mr. Gregory: Courts generally react to legislation, do they not?

Mr. Maybee: I suppose they would react to legislation, but if it is not available, they have to go on precedent.

Mr. Gregory: On a personal basis, you see nothing wrong with it. To broaden that, you see nothing wrong if the storage is used as part of a co-operative or a farmers' union which is co-operating in the storage of grains, for example.

Mr. Maybee: I think we have to go back to the integration test. If it is part of the manufacturing process and is just used for storage, I guess it is fair to tax the storage structure, similar to the way other structures used for storage are taxed.

Mr. Gregory: Can I ask a question of the parliamentary assistant at this point?

Mr. Chairman: We will have an opportunity for that at the conclusion of this presentation. Are there any other questions of the group?

Mr. Epp: I do not have any questions now. I appreciate them being here and their submission. We will look at their suggestions and see whether there is anything we want to adopt. I appreciate them coming forward.

Mr. Chairman: Thank you very much, gentlemen.

Mr. Sargent: How can we tax those guys?

Mr. Chairman: As some members of the committee know, last week we decided to advertise, in a group of newspapers across the province, the fact that these hearings were being held. The ad included a description of the legislation, which was provided to us by the ministry. I believe that ad is in some of the dailies today. By what date does it invite submissions in writing?

Clerk of the Committee: We will accept calls for appointments for all submissions up to November 21 and we will accept written submissions up to November 27.

Mr. Chairman: I presume that means we will need to sit on November 27 to hear those who indicate their wish to appear to us. We have a bit of a problem next week when the committee is to sit on Bill 131. Some of the groups have indicated next week is a little soon for them. I am not sure what we do from this point on. We have a motion to sit next week, morning and afternoon. I suppose we should have a motion to sit on November 27, morning and afternoon, in view of the statement in the ad. Can I have a motion from somebody on the committee, if that is your wish?

Mr. Sterling: Are some groups going to be able to come next week?

Clerk of the Committee: Yes.

Mr. Sterling: I will move the motion if we will have adequate numbers.

Mr. Chairman: Mr. Sterling moves that the committee sit on November 27, morning and afternoon.

Motion agreed to.

Mr. Chairman: We do not have any other submissions today. Those of you who are interested in the proceedings and the points made by others may want to come back at those two sessions. To refresh your memories, they will be from 10 a.m. to 12 noon and from about 3:30 p.m. until 6 p.m. on November 20 and 27.

I believe it is the committee's wish to meet for a short period with the ministry to understand a little better some of the points in the bill. We thank you for your appearance this afternoon, short as it may have been.

Mr. Sterling: Before any interested parties leave, I do not know whether the ministry is going to provide us with any reply to our request for financial data and analyses, etc. I do not know whether these people, who are interested in the outcome of this bill, might want to share in that. I presume it would be public information.

16:00

Mr. Chairman: Yes.

Mr. Sterling: Do they have a response to their letter?

Mr. Chairman: Yes, they do.

Mr. Sterling: Have you produced it in enough numbers so that people can have a copy of it?

Mr. Chairman: The answer to that is no.

Mr. Epp: We do not have a financial statement. We do have a book we would like to distribute this afternoon to indicate more clearly the answers to some of the questions that have been raised in the Legislature. We would also like to go through some of the points and clarify them. However, I do not have a statement on the financial implications.

Mr. Sterling: Has the ministry done no analysis of how this is going to affect the various segments of the business community and different municipalities, etc.? Are there no financial data in that area or are you acting in a void?

Mr. Epp: We can give you some of that financial information. We can give it to you for Malden township and so forth, but we cannot give it to you for all sectors of the province.

Mr. Sterling: You have not done it in terms of how it is going to affect co-operatives or credit unions?

Mr. Epp: No.

Mr. Sterling: You have not done any financial analysis.

Mr. Epp: You should ask Mr. Lettner to respond on what we might be able to get for you.

Mr. Sterling: Did the committee's letter go out and have we received a response to it yet?

Mr. Chairman: Mr. Sterling, do you have a file over there?

Mr. Sterling: Yes.

Mr. Chairman: Is there a letter in it?

Mr. Sterling: Yes.

Mr. Chairman: Mr. Epp, will you distribute the information you have brought with you?

Mr. Epp: I will have the clerk distribute it.

Mr. Sterling: This letter was written only yesterday. You have only received it.

Mr. Chairman: Do not get too excited. It was a follow-up letter to a phone call, and there is a good deal of information here for you even though it may not be everything you wanted.

Mr. Sterling: There is no answer in here.

Mr. Epp: You will notice it has a blue cover. You will appreciate that.

The information that now is being distributed deals with specific questions that were asked in the House. I would like to go through the various issues that are before us, as outlined in the bill, and try to respond to some of the concerns that members may have to prepare them better for the delegations that will be coming before this committee next week.

Mr. Sterling: For those people who do not have a copy of the letter, the letter from our chairman said that we "would require information as to what institutions, businesses and other interests would be affected by this legislation. The committee would also request any studies, submissions, briefs or information in the hands of the government on how this legislation would affect those interests." Is it the intention of the ministry to answer this letter?

Mr. Epp: We answer any letters we receive.

Mr. Sterling: When can we expect an answer?

Mr. Epp: Which one are you referring to?

Mr. Sterling: The November 12 letter from the chairman of the committee.

Mr. Epp: It was just sent over yesterday.

Mr. Sterling: There was a phone call about a week ago about it.

Mr. Epp: Yes.

Mr. Chairman: Mr. Sterling, I think we can assume that the brief you have before you is, if not in whole, then in part the answer to the questions we have asked. After we go through this, if there are still other points you wish to raise or questions you would like answered, we can do it then.

Mr. Epp: I believe that many of the questions that have been raised in the letter may be responded to if we go through the various issues. I hope we will be able to answer the questions. If there are questions outstanding or not replied to in the way you wish, you can ask them again or we can try to get the information for you. We are interested that you get the information you want. That is the reason for the suggestion we go through the various sections today and try to outline some of the reasons behind the proposed legislation. It is so you will be better prepared for the delegations that come before us.

Mr. Sterling: There is no information we have requested and that is in the hands of the government that you have not produced. Is that correct?

Mr. Epp: There is information before you.

Mr. Sterling: Is there additional information that you or the government--

Mr. Epp: I do not have a handout in addition to what you have there.

Mr. Sterling: I know you do not have a handout. Does the Ministry of Revenue have more information? Has it done any studies in terms of the financial impact on the various industries?

Mr. Epp: Not a specific industry, no.

Mr. Sterling: Have you done any studies?

Mr. Epp: I am going to ask Mr. Lettner to respond.

Mr. Lettner: With regard to credit unions, in 1984, when we took the assessment off credit unions, the loss to municipalities in business assessment was \$700,000. When we lost the case on the racetracks, the loss to the four municipalities involved--Milton, Etobicoke, Fort Erie and Toronto--was \$3.1 million in that year. The case now is before the courts with regard to machinery equipment versus storage facilities. If we lose, we have lost more than \$2 million in tax dollars. Those are the only studies we have at the present time.

The purpose of the bill is to get the status quo back to where it was before we went to the courts on credit unions, other businesses, storage facilities and racetracks. It is not to raise more money for the municipalities than they had before we lost in the courts. The losses we are talking about are \$700,000 with credit unions, \$3.1 million with racetracks and \$2 million with storage facilities versus machinery. We are not doing studies and saying that the bill is going to expand the tax base. We have said all along that the bill will not expand the tax base more than what we had before we lost in the courts. It was not intended to raise more money for the municipalities.

With regard to amusement rides, in the book before you there is a case

study on Malden township, Bob Lo Island, showing the amount of money it would lose in the first, second and third year and the amount of money it would regain through the grant provisions and also changing their resource equalization grant and general legislative grant.

With regard to the others, we have the figures on the amount of money amusement rides would lose throughout the province. We have not done a detailed case study on every municipality and what they would get back with regard to a grant in the first, second and third year and what would change their resource equalization grant or legislative grant. We did an in-depth study in Malden township and it is in the book we have presented you with.

16:10

Mr. Sterling: All the information you have given me now, plus what is in the book, is what you have?

Mr. Lettner: That is right. Perhaps I might explain. The book contains answers to questions that were sent to us in letters from various organizations. On the first page, under "Business Assessment," there is the business tax liability of bible and other religious camps. This was raised by David Fenton and Ernie Belch, two different people. Our response was: "The tax exempt status of these camps will not be affected by Bill 131."

We go on through the letters we have received with regard to business assessment and our responses.

In the second section, we go through the business tax liability of credit unions and list the persons that raised the questions, who they represent, the response and then a brief history of why credit unions were lost.

Under "Machinery and Equipment," there is a brief history of the issue, who raised the question and the response. We go to the other wording of subsection 2(1). We show the people who raised it and we go through that.

In the back of the same section, we also have draft policy guidelines on machinery and equipment, about which we will be talking later on. The guidelines are issued to all assessors. They are in draft form because I made a promise to the committee on property tax issues that I would go over the guidelines with it before they were printed and distributed to the assessors.

In the next section, "Amusement Rides," we have the issue and who raised it. We also have the city of London opposing the exemption, the article that appeared in the paper on the town of Vaughan, the official response of the Association of Municipalities of Ontario and the response of the ministry.

On page 32 is a detailed breakdown. It is the only cost breakdown we did with regard to amusement rides. It is for the township of Malden, showing its tax picture now and what it would be if the amusement rides were exempted. It breaks down Bob Lo Island into land, buildings, amusement rides and business assessment. It shows a tax loss of \$49,255 to Malden in the first year and a full grant of \$49,255.

I am on page 33 at the bottom. In 1987, it shows a phase-in grant of \$49,255, which is 100 per cent of its loss. It would put them into a position

of receiving resource equalization payments of \$13,563. In the first year, their total would be \$62,818.

On page 34, we have gone one step further and taken the other two parts of the tax bill, the county of Essex part and the education tax. We have shown in detail what would happen to those two particular levies at Malden. That is really the only detailed cost breakdown we did.

At the back, we have given a summary of leading court cases we believe would be of interest to the committee on business assessment liability, machinery and equipment and co-operatives, including Produce Processors Ltd., the Ontario Jockey Club, the Canadian Life Insurance Association Inc., the Kitchener-Waterloo Real Estate Board Inc., Canada Cement Lafarge Inc. and so on.

At the back, under "Appendices," we have from Hansard the concerns raised by opposition members in the House during the second reading debate. The last appendix is the index of correspondence the ministry has received and the subject matter of that correspondence on Bill 131.

Mr. Ferraro: I have a question for clarification. With regard to chambers of commerce, they are exempt from business tax, and the bill will not change that. Could you clarify for me the situation where chambers of commerce operate licensing on behalf of the government of Ontario? Exactly how does the present system work? Does the government pay them so much? Assuming they make a profit, is it tax exempt?

Mr. Lettner: I am sorry. Licensing for vehicles?

Mr. Ferraro: Motor vehicle licensing. In my own situation, in the municipality of Guelph, the chamber of commerce operates the licence bureau.

Mr. Epp: They operate the licence bureaus for a profit.

Mr. Ferraro: I imagine they are not doing it out of the generosity of their heart. Why should they? Is that tax exempt? What is the exact situation?

Mr. Lettner: I would have to find out exactly. The chamber of commerce would be exempt. The portion it occupies for business would, in all probability, be liable to a business tax.

Mr. Ferraro: Could you find out? I am curious.

Mr. Lettner: I could find out for next week.

With regard to business assessment, we must have a defined area, because business assessment is--

Mr. Ferraro: It is based on square footage.

Mr. Lettner: It is based on a percentage of the realty assessment it is occupying. They would have to have a definite percentage. I can find out and let you know about that.

Mr. Ferraro: I am curious about the arrangement.

Mr. Sterling: Did you say that was going to be amended?

Mr. Ferraro: It is not going to change. I was just curious. There are chambers of commerce that operate as an entity, and they also have the responsibility to look after licensing.

Mr. Sargent: You gave the town of Malden a resource equalization grant. Is that a fund in the Treasury? What is that?

Mr. Lettner: It is administered by the Ministry of Municipal Affairs.

Mr. Sargent: How much is in the fund?

Mr. Lettner: I do not know. It is considerable. Most municipalities get it when their assessment per capita is--

Mr. Sargent: Is it kind of a cushion? What do you mean?

Mr. Lettner: It is a grant to the municipalities. I could find out more about that too.

Mr. Epp: The purpose of that fund is to equalize the tax base for various municipalities. Some municipalities, such as your own, have a much better tax base than others. The purpose of that grant is to equalize the burden for the various taxpayers and to give a greater amount on a per capita basis to those municipalities that have less of an industrial or commercial tax base, that type of thing. Some municipalities may end up not getting any and others may get a substantial amount.

Mr. Sargent: All assessment in Ontario is carried out by the province.

Mr. Lettner: That is correct.

Mr. Sargent: How often do you do an equalization?

Mr. Lettner: We do equalization factors. We produce 1,000 equalization factors each year, and they are published in the Ontario Gazette on or before July 1. They are used for apportioning and grant purposes and are subject to appeal by the municipalities until November of the same year. Each year, our assessors spend the best part of three months doing equalization factors. It is done every year. In 1986, it was based on 1985 market value in those municipalities.

Mr. Sargent: If a municipality decided it could do a better job doing its own equalization or its own assessment, would you let it leave you?

16:20

Mr. Epp: That is a political question, and I will try to answer it. The question is whether we would have assessment go back to municipalities, as it was prior to 1970 or 1971. At that time, the Honourable Darcy McKeough and the government of the day decided they would centralize assessment, and that is still a policy of this government. Whether it will be changed in the future is something you may have an impact on, but at this point no decision has been made to revert to the policy of the late 1960s to give assessment back to municipalities.

Mr. Sargent: I am not saying we should. He does a hell of a good job. I know this guy.

Mrs. Grier: I find this booklet very helpful. It is organized in such a way as to clarify the responses to the criticisms raised. Is the same kind of information available with respect to the concerns raised during second reading? Have you a response to each of those arguments? At what point do we get them?

Mr. Lettner: We do not have a response. We have not really addressed that. What we put in was for the committee to be aware of what happened during second reading. The others were letters to which we replied. We could get responses if the committee so desires.

Mr. Chairman: Is that a request?

Mrs. Grier: I assume some of it will come out during the discussion.

Mr. Chairman: Correct.

Mrs. Grier: I will wait, and if it is not, I will ask for it then.

Mr. Epp: To expedite things and not get bogged down with each particular and to make sure that every question is answered, if there are questions about letters you feel have not been answered during our discussion, we will be glad to try to get those for you later on.

Mrs. Grier: Thank you.

Mr. Chairman: Mr. Epp, I understand that you have notified everybody listed on pages 49 and beyond, those who corresponded with you, that this bill was being heard in committee. Is that correct?

Mr. Epp: That is a technical question. I will ask Mr. Lettner to answer that one.

Mr. Lettner: Yes, Mr. Chairman. Letters were sent to everyone listed from page 49 on notifying them of the first date of the sitting of the committee, November 21, and the last date for written submissions, November 27.

Mr. Chairman: Back to you, Mr. Sterling. You have now seen the information that has been submitted. Do you wish to comment further on it?

Mr. Sterling: Mr. Lettner has told me that he has given us all the information he has. I accept his word about that, and there is not much sense in pursuing it further. I have not had an opportunity to read the blue book all the way through. I may have some questions about it, but it satisfies me. I think he has organized it well, and I would like to thank him for doing that for us. It makes it somewhat simpler to understand what is going on.

I have one question. Mr. Lettner said the intent of the legislation was to put back the Assessment Act to where it was supposed to be until it was upset by the court cases. How long have the tax holidays been going on for the various industries that will be affected by this legislation?

Mr. Lettner: To get back to machinery and equipment, we have lost the cases up until the Divisional Court. Most of the cases at present are under appeal to the Divisional Court.

Mr. Sterling: How long have people not been paying liability and business tax? Is it two years? Is it 10 years?

Mr. Lettner: Since 1983, in Caisse populaire de Hearst Ltée, which decided credit unions and caisses populaires across the province. To the best of my memory, the Ontario Jockey Club is two years. Manufacturing equipment is still before the courts. We have lost it. We have conflicting decisions on storage versus machinery, and most of the cases are now under appeal to the courts either by the owners or by the regional assessment commissioner.

We have not appealed the cold storage and co-operatives decisions further. We have abided with the idea that where farmers get together to form a co-operative for the storage of apples, etc., the equipment and the business assessment is exempt.

Mr. Sterling: That is not changing here.

Mr. Lettner: It is not changing, and we have accepted that. It has been only in the past three to four years where we have been--1983 was the first one when we lost Caisse populaire de Hearst.

Mr. Sterling: There will be nothing when we reach back five or 10 years. We will not hear from anybody who will come in here and say, "We have set up our business plans on the basis of not paying the realty and business taxes and therefore we are going to hurt to a very large degree because of this legislation"?

Mr. Lettner: No.

Mr. Ferraro: Not being a regular member of this committee, I hope the witnesses and representatives will be patient with me.

There was some discussion by the previous delegation on the amusement rides exemption. Mr. Lettner or Mr. Epp, could you explain to me very quickly--I have read the summation here--what the purpose of the exemption is? It is not dealing with profit generation by the amusement rides; is that correct? Or it is in certain circumstances or in all circumstances?

Mr. Lettner: The purpose of the amendment is to exempt from taxation the foundations and the trestles on amusement rides. The cars are already not assessed.

Mr. Ferraro: They are not profit generated?

Mr. Lettner: No. It will exempt only the trestles and the foundations. It is very similar to manufacturing and farming, where we exempt the manufacturing equipment, the manufacturing machines and the foundations upon which they rest. It is very comparable to the manufacturing and farming exemption.

Mr. Ferraro: If one of the criteria you use for the exemption is the promotion and so forth, would it necessarily hold true then, for example--it might be the case, I do not know--that anybody in the service sector dealing with tourists should be exempt too, instead of just manufacturing and farming? In other words, if I am opening up a restaurant, do I have a tax exemption if I am buying a fryer?

Mr. Lettner: You are buying a fryer?

Mr. Ferraro: To make french fries.

Mr. Lettner: It is exempt now. It is not attached; it is a chattel.

Mr. Ferraro: Is there a finer distinction to be made then? Enlighten me, Mr. Lettner. I am sure you will. I am thinking primarily of a small business person in the service sector, not necessarily manufacturing or farming, but who has to promote tourism and hospitality to some degree. Are they all exempt now?

Mr. Lettner: They are liable for realty tax and business assessment. If you are talking about a motel, we assess only the building, not the beds, the dresser and television, etc. If you are talking about a service station, in section 63 on reassessment, we assess the building and the land. We no longer assess the pumps, the tanks, the hoists or the compressors. If you are assessing a supermarket, we do not assess the display counters and the refrigeration counters but we do assess the walk-in freezers and the meat cooler.

Mr. Ferraro: Why?

Mr. Lettner: Because they are bought with some pretty good degree of permanence. We do not assess the long display counters, the fruit counters or other counters, the cash registers or the check-out counters. Basically, we assess the building and the land. I could go on from there; there are many small businessmen. We assess the building and the land.

16:30

Mr. Ferraro: Let me give you an example. Let us say somebody is in the laundry or dry cleaning business. If I am going to open up a little dry cleaning shop, what equipment am I liable for?

Mr. Lettner: None. You are liable to assessment on it all, but we do not assess dry cleaning equipment for taxation. You would be assessed for the building and the land.

Mr. Ferraro: That is it?

Mr. Lettner: That is it, and business assessment on top of it.

Mr. Sterling: Along the same lines, let us talk about a bulk oil distributor. These guys sell fuel oil and have outdoor storage tanks.

Mr. Lettner: You would be assessed for the tanks if they are for storage purposes. We were going to bring up this subject later. If you are talking about a refinery, we have an agreement with the oil industry that since the tanks in the refinery are used for different processes--one week they might be used for storage and the next week they might be used for manufacturing--we assess all the tanks in the refinery and tax only 50 per cent of them. In a year, 50 per cent of the tanks in the refinery are used for storage.

However, if you are a bulk storage distributor--

Mr. Ferraro: It must be an administrative nightmare to keep track of all that. Is there not an easier way?

Mrs. Grier: Let it go back to the municipalities.

Mr. Lettner: We have 31 regional assessment offices with 31 commissioners and the assessors. We have issued a cost manual and an

assessment policy manual to every assessor. The policy manual details what they can and cannot assess. All the assessors in Ontario are well trained.

Mr. Ferraro: I was not implying they were not. I am talking about the system.

Mr. Lettner: I do not think it is a nightmare if you are working with it from day to day.

Mr. Ferraro: Just if you have to pay taxes.

Mr. Lettner: We have found that working under market value assessment and section 63, the people understand assessment and do not really find it a nightmare.

Mr. Pollock: My questions are along the same lines as Mr. Ferraro's. Are there many properties that should be assessed but which you miss?

Mr. Lettner: Not now.

Mr. Pollock: There have been lots of them, have there not?

Mr. Lettner: There were. I can probably safely say that thousands of properties had not been assessed when the province took over assessment in 1970. We are still picking up some properties where we are working in the provincial land tax area, the unorganized area. We now administer the assessment function in that area, and we find the odd property that has not been assessed as we go through the unorganized areas in the far north.

Mr. Epp: It is in the municipalities' best interest to make sure all properties are assessed so that they can get the revenues from them. Of course, the municipalities co-operate with the provincial government to make sure they are assessed.

Mr. Pollock: Sometimes even municipalities do not know whether these buildings are assessed.

Mr. Epp: If you know of any, let me know.

Mr. Guindon: I would like you to try to simplify it a little bit for me. Could you go through with me which businesses you are going to be affecting positively and which ones you are going to be affecting negatively?

Mr. Ferraro: From whose perspective?

Mr. Guindon: On the end-user perspective, if it is the business end.

Mr. Lettner: If the bill goes through, we will be assessing caisses populaires and some credit unions for business assessment. Even back in 1983, quite a number of credit unions were not assessed, because many of them were run from church basements and were run on a part-time basis with no definite area involved, so we did not assess them. Many of them had a very restricted membership, so they were not assessed for business.

We would be assessing the stock and commodity exchanges. We would be assessing four racetracks for business. We have assessed all the other racetracks in the province for business, Kawartha Downs, Sudbury Downs and the others. We would be putting the four back on. That would pretty well bring it

back to the status quo we had before. We would not be assessing trade associations. We would not be assessing the Canadian Property Tax Agents Association Inc. or the others that are basically educational, religious or charitable associations.

Mr. Guindon: What is the total in dollars that you will be reaping from it?

Mr. Lettner: If you are talking about the racetracks, and this is strictly off the top of my head, we are probably talking about \$4 million tax dollars.

Mr. Epp: That is lost a year by the municipalities where those racetracks are situated.

Mr. Lettner: There is one other thing. When you lose business assessment from a racetrack, the racetrack is then taxed at the residential mill rate. I am talking about a combination of business assessment and commercial mill rate. The commercial mill rate keys in on business assessment. If there is no business assessment on a property, it is taxed at the residential mill rate, which is usually 15 per cent lower than the commercial mill rate.

Mr. Guindon: The racetracks in Ontario are having a hard time. Is this not going to add to their burden?

Mr. Lettner: Except for four of them, the racetracks in Ontario are now assessed for business under the Ontario Jockey Club.

Mr. Guindon: You want to level the field.

Mr. Epp: The point we want to make is that these racetracks were subject to assessment and taxes prior to 1984. As a result of a court case, they are now exempt from taxation. We wish to restore that original inclusion so that they have to pay taxes, the same as other racetracks across the province.

The other point is that in all the things we are doing, no more money will accrue to the provincial government. It is the municipalities that would like to see us restore the status quo as it existed prior to the court cases.

Mr. Guindon: In some way, the province is going to benefit from it, because the grants will be smaller in certain areas, I am sure.

Mr. Epp: I really do not know. It may marginally affect us to that extent, because the resource equalization grant may not be as large and so forth and we may have to change the formula. However, I really think if there is any, it is very minimal. I doubt if those are even going to change marginally since the court cases.

Mr. Guindon: Why are we going after them then?

Mr. Epp: Because the municipalities want those areas restored and the government believes they should be restored to their original status and that they should be paying taxes, as others have.

Mr. McKessock: I have been trying to sort through some of the confusion as it relates to farming. How do you assess a \$20,000-manure storage

tank? It is assessed at its cost? Is it assessed as the farm and the farm buildings are assessed, not at their cost?

Mr. Lettner: It is not assessed at its cost. It is assessed the same as other buildings on the farm. The farm is looked upon as an economic unit. If you assessed the buildings at what they cost, you would have nothing left for land value, for example. It is a well-known principle that farm buildings do not add their value or their costs to the land.

Forget the manure tank, but talk about the harvester--

Mr. McKessock: I do not want to forget about the manure tank; that is the one I am concerned about. If it cost them \$20,000 to build it, what would it be assessed at?

Mr. Lettner: I could get that figure for you.

16:40

Mr. McKessock: I am concerned what that will mean when it is assessed, at what extra taxes they will pay.

Mr. Lettner: Silos, manure tanks and milk houses have been assessed all along.

Mr. McKessock: I notice that manure tanks are assessed, but then in another place, on the nonassessed items, are silos and tanks pertaining to processing, blending and mixing.

Mr. Ferraro: What are you suggesting?

Mr. McKessock: I am suggesting that if they use the tanks, which we hope we are going to get into shortly in something else, they will be blending and mixing the manure so that it will not smell any more. If that were the case, then it would be exempt from taxation.

Mr. Fpp: You are saying that if you had a tank and you mixed manure, you would be upset if we assessed it. Is that correct?

Mr. Ferraro: He is saying it should be exempt.

Mr. McKessock: I am taking the words out of the book. It says that if it is blended or processed, it is not assessed.

Mr. Lettner: You are looking at two different things. One is a list of manufacturing. The other is what we are currently assessing on a farm versus what we are not assessing. That is on the next page.

Mr. McKessock: That is correct.

Mr. Lettner: The one we are talking about under manufacturing--

Mr. McKessock: Under manufacturing, you say that processing, blending and mixing are not assessed. I was relating the manure storage tank, where if there were processing, blending and mixing going on in it, it would be similar to manufacturing.

Mr. Lettner: I do not wish to prolong it. If you could change the

nature of manure by mixing, blending and processing, it would probably be exempt.

Mr. McKessock: That is what we hope we will be getting into, so that we will not have to bother our neighbours when we spread it. Do you think there is a chance of getting it tax exempt if the process takes place?

Mr. Lettner: If it changes the nature, yes.

Mr. Sargent: Remotely connected with manure, the handle at Greenwood Race Track was \$148 million last year, Orangeville Raceway was \$16 million and Barrie Raceway was \$5 million.

Mr. Sterling: How much of that was yours, Eddie?

Mr. Sargent: I got a note from Frank today.

Are they taxed on the revenue they handle or on buildings only?

Mr. Lettner: They are taxed on land and buildings. If you look at the Orangeville and Barrie raceways, the operators pay a grant because the raceways are on agricultural society land, which is exempt. If you look at the others, they might be bought and sold in the United States on the handle--if by "handle" you mean the amount of money they bring in--but we assess them on their land, buildings and grandstand, pretty well at cost.

Mr. Sargent: Is agricultural land not a dodge? Why in the hell do they not buy it or get off it?

Mr. Lettner: The two you are talking about, Orangeville and Barrie, are on agricultural society land. The operators of that--

Mr. Sargent: Pay the agricultural society?

Mr. Lettner: The agricultural society gets the rent from the operators of the raceway, but the two operators of the Barrie and the Orangeville raceway pay taxes as if they owned it. They pay it as a grant because they are not liable--

Mr. Sargent: Why not tax the handle?

Mr. Guindon: They do.

Mr. Chairman: It is taxed. Not to confuse the issue, there is no realty tax on the handle, but there is retail sales tax, and it is taxed fairly heavily. I am not sure what it is.

Mr. Lettner: We do have another tax in revenue on the bets.

Mr. Sargent: Let us move to nursing homes. You say you assess land and building value. If a man improves his home, the assessor goes around and makes a note of the improvements the guy has put on the house and his taxes are higher than those of the guy who has the same land, the same building next door but it is run down. How do you assess that?

Mr. Lettner: We assess property on its market value.

Mr. Sargent: On market value?

Mr. Lettner: That is right. If you are looking at a house that is run down and a house that is kept up to date, with a recreation room, fireplace, built-in bookcase and everything, the market value of the two houses would be different. Therefore, the assessment would be different.

Mr. Sargent: What about nursing homes?

Mr. Lettner: We do them on the income approach. There are three methods of arriving at market value. One is the cost approach. That is the cost of land plus the cost of buildings. The second is the income approach. How much money does it generate? The third is the comparative sales approach. On nursing homes, we use the income approach. We do the cost approach and we do--

Mr. Sargent: You get them both ways then.

Mr. Lettner: We compare them, as any appraiser does. You rely on three approaches and then pick the one that is most applicable to the property you are doing. I cannot imagine anyone who would not buy a home that he could rent and make money on. We use the comparative sales approach on that, even though we do a cost approach. If you paid \$200,000 for a home, I do not think you would ever get an income stream from that.

Mr. Sargent: I have a closing question. Can you not see a lot more revenue from these gangbusters as the years go on? It is a big business now and it is rampant. They are making money there. Why do you not raise their taxation?

Mr. Lettner: If they are making money, that is an income tax. We are looking at fair and equitable tax treatment for the property under market value.

Mr. Gregory: Perhaps I should ask the question directly of Mr. Lettner. After market value reassessment was done in Mississauga, the largest number of complaints I receive are from shopping centres. I guess they are taxed on an income basis.

Mr. Lettner: That is right.

Mr. Gregory: Why is that?

Mr. Lettner: That is the way they are bought and sold.

Mr. Gregory: If a rental apartment is taxed on the basis of value, it is not done on an income basis, is it?

Mr. Lettner: Yes, it is.

Mr. Gregory: In the same way?

Mr. Lettner: Yes.

Mr. Gregory: This may sound rather stupid. How would you know why I get these complaints? The complaints seem to be based on the opinions of owners of shopping centres almost side by side. You find one who feels he has been overassessed and the other one agrees with him. There does not seem to be any consistency in the shopping centres. I have heard the complaints in the same way you have and Mayor McCallion has, but the only one that seems to have

any validity is the equality in the shopping centres themselves, in other words, what your assessors assume they will rent for, which is not necessarily the case.

Mr. Lettner: Shopping centres are difficult to assess in the first place. When we arrive at a fair market rent and arrive at a capitalization rate, we can have two shopping centres in the same municipality with different capitalization rates and different rentals, depending upon the mix of stores and the rents they are receiving at present.

Shopping centres have gone up in many municipalities under section 63 for the basic reason that the total commercial at the end of section 63 remains exactly the same. However, you will find in most areas the downtowns or older areas go down and the shopping centres go up.

If I can use a comparison in the city of Timmins, when we did the reassessment there, the downtown area went down by an average of 20 per cent. The difference that they went down had to be picked up by the rest of the commercial, which is the shopping centres.

Mr. Gregory: I understand that, but I have difficulty with why it would not be possible, since you can assess on a market value; in other words, what a willing buyer will pay to a willing seller. You can assess residential houses or almost anything that way. Since they are all being reassessed, why do you not do that with shopping centres as well?

16:50

Mr. Lettner: We do.

Mr. Gregory: You said you did it on an income basis.

Mr. Lettner: That is what a willing buyer will pay a willing seller.

Mr. Gregory: Part of it.

Mr. Lettner: We do a cost approach, we do a comparative sales approach if it is sales of shopping centres and we do an income approach. We feel that more reliance should be placed on the income approach than on anything else, for the simple reason that a person who is going out to buy a shopping centre, an apartment building or any revenue-producing property today will buy it only for the amount of money he can get back from it.

Mr. Gregory: What would he base that on? Full recovery in how many years?

Mr. Lettner: I do not know. I could find out. I have not done shopping centres for so many years, I could not tell you, but I can find out and let you know.

Mr. Gregory: I would be interested in that. It is something you undoubtedly taught me while I was with you, but I have totally forgotten it. Another thing I have totally forgotten is the assessment of storage tanks or storage bins. According to the courts, they should be assessed, but they have not been, or they have not been taxed or something. Now you are making it legal that they be assessed.

Mr. Lettner: Over the course of the years, we have assessed tanks,

silos and bins that are used for storage. We have exempted silos, tanks and bins where a manufacturing process is carried on. By "manufacturing" our assessors work on a term where the nature of the goods has been changed.

In some cases the courts have held that the storage tanks are an integral part of a manufacturing process even though there is only a preservative put in the storage tanks to keep the vermin out of the silos. It is an integral part of the manufacturing process, and therefore they should be exempt.

Where the nature of the goods has not changed through a chemical process, a mixing or a blending, those tanks used for storage have always been assessed for realty and business. In a number of cases, the courts have held that because of the integration test, certain storage tanks are machinery and equipment and should be exempt.

Mr. Gregory: When something has been assessed and has not been taxed, since municipalities do not like to cut down their expenditures, they would normally increase everybody to compensate for that loss. Is that a fair statement?

Mr. Lettner: When we have a major loss in a municipality, everybody else in the municipality pays.

Mr. Gregory: Right. Under this bill we are making them taxable. Will the municipalities reduce the overall tax on everybody else to make up for this windfall they will get?

Mr. Lettner: They will not get a windfall. All we want in this bill is to bring back the status quo before the court cases. It has never been our intention to expand the present method or the method we have used for assessment. All we feel we are asking for with this bill is to go back to the status quo we had prior to the court cases.

Mr. Gregory: When was "prior to"?

Mr. Lettner: The past two years.

Mr. Gregory: Over the two years, somebody was not getting a tax he should have got, right?

Mr. Lettner: No. We were getting the tax, but then the court wiped the tax out.

Mr. Gregory: That is right; it wiped it out. During that period after it wiped it out, some municipality was short that money.

Mr. Lettner: They have not been yet, because we have kept the appeal open. We are still appealing.

Mr. Gregory: Are you going to make this bill retroactive?

Mr. Lettner: No. If passed, it takes effect on January 1, 1987.

Mr. Gregory: If there was a two-year period where there was a shortfall, then somebody is out that money for that two-year period?

Mr. Lettner: That is correct.

Interjection.

Mr. Gregory: Could I just carry on before I lose my train of thought, if any?

By this act, this money will now become available again to the municipality, which probably reassessed everybody else over the two-year period that it lost money to make up that shortfall. Since the two-year loss is now being reinstated, will they now be reimbursed? Will the municipality reduce everybody's tax assessment to pay back that money? The municipality should not get any more than it was getting before, should it?

Mr. Lettner: I would put it this way: In the two-year period, if it lost money, it would have had to raise its mill rate. If it comes and we get back the money we had before, it could probably keep its mill rate at the same level or reduce it.

Mr. Gregory: Wait a minute now. You said it would have had to raise its mill rate because of that. Now that we are rectifying the situation, you said it would leave its mill rate the same. You did not say it was liable to lower its mill rate. In effect, if you are doing that, there is a windfall to the municipalities.

Mr. Lettner: I cannot control what they do with their mill rate. They raise it, lower it or leave it the same.

Mr. Gregory: I am just asking your opinion.

Let me give you a hypothetical situation--not with grain storage, because there are not many in Mississauga. If something such as this happened in Mississauga with condominiums, for example, the mill rate was probably raised in Mississauga to make up for losses on condominiums. If that were suddenly reversed, would the municipality then lower its mill rate again because of the additional windfall it would be getting because of the change in the condominium assessment?

Are you as confused over this question as I am?

Mr. Lettner: No. I am not confused over the question, but I look at it this way: A municipality needs X number of dollars to operate, so in the year that it loses \$3 million and it has a \$3-million shortfall, it would have to raise its mill rate to pick up the \$3 million.

If in the next year it suddenly got \$3 million and the municipality's costs remained exactly the same, it should lower its mill rate for that windfall.

Mr. Gregory: I think you have answered yes to my question.

Mr. Lettner: Yes, if that is the case. But in this day and age--I am just hedging my bet--with inflation, I have not seen many mill rates decrease.

Mr. Gregory: No. I would not be concerned with the mill rate decreasing so much as with its not staying the same, basically, and then absorbing the windfall plus inflation.

Mr. Lettner: The municipalities are not allowed to budget for a surplus.

Mr. Gregory: I do not know of a municipality that could not spend everything it budgeted for.

Mr. McKessock: I have a supplementary.

Mr. Chairman: There is a supplementary here first.

Mr. Guindon: With regard to storage tanks, I have a question for my curiosity. Are the propane tanks assessed for storage?

Mr. Lettner: At a propane depot or at a person's house?

Mr. Guindon: No; I am talking about a depot. I am sure you do not tax it on a house.

Mr. Lettner: To the best of my knowledge, yes, but I would have to check to make sure. The large propane storage tanks should be assessed.

Mr. Guindon: If you find out that it is different, will you let me know?

Mr. Lettner: I will let you know.

Mr. McKessock: You mentioned that a court case wiped out the assessments, and therefore you are bringing in this bill to put the law back in force. Is it possible that a court case could wipe it out again, or are there any changes in the act that might prevent that?

Mr. Lettner: We are looking at the changes we have in the act now to clarify it for the courts, ourselves and the owners.

Mr. McKessock: Do you think the previous bill was not clear enough, that this is why it went to court and that now the chances of its being taken to court again are not as great?

Mr. Lettner: That is correct. In one of the court cases, one of the justices said that if the Legislature wanted it clear, it should have--this is off the top of my head--made it more clear.

Mr. McKessock: That is what you are doing?

Mr. Lettner: That is what we think we are doing.

Mr. McKessock: That does not prevent anybody in the future from launching another court case.

Mr. Pollock: Do pit silos get classified the same as vertical silos?

Mr. Lettner: Do you mean a dugout with cement around it?

Interjections.

Mr. Lettner: They get assessed, but they are not assessed the same. They get assessed for the concrete; that is all.

Mr. Chairman: Are there any other questions? We will adjourn for today and commence again next Thursday at 10 a.m. Thank you.

The committee adjourned at 5:01 p.m.

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G-21

STANDING COMMITTEE ON GENERAL GOVERNMENT

ASSESSMENT AMENDMENT ACT

THURSDAY, NOVEMBER 20, 1986

Morning Sitting



STANDING COMMITTEE ON GENERAL GOVERNMENT

CHAIRMAN: McCague, G. R. (Dufferin-Simcoe PC)
Fontaine, R., (Cochrane North L)
Grier, R. A. (Lakeshore NDP)
Guindon, L. B. (Cornwall PC)
Henderson, D. J. (Humber L)
Lane, J. G. (Algoma-Manitoulin PC)
McKessock, R. (Grey L)
Pollock, J. (Hastings-Peterborough PC)
Sargent, E. C. (Grey-Bruce L)
Sterling, N. W. (Carleton-Grenville PC)
Swart, M. L. (Welland-Thorold NDP)

Substitution:

Partington, P. (Brock PC) for Mr. Lane

Also taking part:

Epp, H. A. (Waterloo North L)

Clerk: Deller, D.

Witnesses:

From the Canadian Standards Association:

Fox, P., Counsel
Kent, E., Corporate Secretary

From Canada Malting Co. Ltd.:

Mackay, A. L., Vice-President, Operations

From the Ministry of Revenue:

Lettner, W. J., Assistant Deputy Minister, Property Assessment Program
Patterson, E., Director, Legal Services Branch, Oshawa

From the Canadian Portland Cement Association:

Poole, R., Counsel
Milligan, P., Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday, November 20, 1986

The committee met at 10:11 a.m. in room 228.

ASSESSMENT AMENDMENT ACT
(continued)

Resuming consideration of Bill 131, An Act to amend the Assessment Act.

Mr. Chairman: Can I have your attention, please? If I have any prerogative in the matter, I suggest that we start. Mr. Epp has agreed that is appropriate. We are considering Bill 131, An Act to amend the Assessment Act. The first presentation this morning is from the Canadian Standards Association, represented by Eric. Kent, the corporate secretary, and Paul Fox, counsel. Will you please come forward to the microphones and proceed with your presentation?

THE CANADIAN STANDARDS ASSOCIATION

Mr. Fox: Good morning. We are here to make submissions with respect to only one aspect of Bill 131, and that is its stated intention to impose business tax on nonprofit corporations that engage in commercial activities in competition with business corporations or that promote the interest and profits of their members.

The notice published in the *Globe and Mail* announcing these hearings states that one of the purposes of the bill is to restore business tax liability to certain nonprofit activities and then proceeds to list some activities. We are thankful not to be on that list but we are concerned that the way the bill reads currently, the amended act could be enforced to catch the Canadian Standards Association. That is the purpose of our being here today.

While we might consider making comments on the merits of this aspect of the bill in general, we have no intention of doing that. We are going to comment only on how we are concerned it affects CSA. Our concerns are twofold. The first is whether there is a government intention to catch CSA. The second is that assuming there is no such intention or that we can convince you there should be no such intention, we are concerned about the wording in the bill as it currently reads.

As to the first concern, if there is an intention to catch an organization such as CSA, we feel there are strong policy reasons why that intention should be changed, mainly because of the beneficial service that is performed by CSA for the public, for governments and for the business community at large. It might be argued that it performs a social function as beneficial or perhaps even more beneficial than hospitals and educational institutions, in that its services affect a wider range of people in a beneficial way and that therefore it is as entitled to be exempt from business tax as hospitals and educational facilities.

Mr. Kent, corporate secretary of CSA, is going to elaborate on some of the services we feel perform a very useful social function. We have handed you

a couple of pamphlets produced by CSA to give you more background information on exactly what CSA does. Assuming CSA is not intended to be caught, or if intended we convince you it should not be, then the specific problems we have with the bill, as worded, are as follows.

The stated purpose is to subject nonprofits that engage in commercial activities to business tax. When CSA was started, it was asked to perform a function for government that no other body was doing. That was back in 1919, I believe. Since then, a number of organizations have decided to compete with CSA, for example, in some of their types of testing. We are concerned that because taxable entities have made business decisions to do functions that have been performed by CSA for years, we will be perceived as competing with commercial corporations and thereby be caught by this amendment. There is no entity that performs the broad range of services that CSA performs, and therefore there is no business corporation that competes in a general sense with CSA.

There is a statement that where a nonprofit corporation promotes the interests or profits of its members, it will be caught. CSA certainly promotes the benefits of its members. There are many thousands of them and there are many businesses that have benefited. However, it is not the closed club that I believe is the intended target of this amendment and anyone is welcome to become a member. We want to ensure the amendment is such that it does not inadvertently catch CSA which performs these useful, beneficial functions for its members.

The new definition of "business" is an attempt to fulfil the stated purpose of the amendment. It states it is not relevant whether a business "activity produces, or is intended to produce, a profit." We are very concerned that this implies all nonprofits now are subject to business tax. This is inconsistent with the stated purpose of the amendment. We feel the amendment is far too broad and casts a net that would catch all nonprofits, not just the nonprofit activities intended to be caught.

We suggest that this definition be amended in a different way. List the specific activities you want to catch such as credit unions and the other listed activities. There may be others, which we will consider and put in writing to the committee. Alternatively, use the language that exists in the federal Income Tax Act, which exempts from tax any corporation or association whose activities are in furtherance of social welfare, civic improvement, pleasure or recreation. Admittedly, that may be too broad and you may have to combine that where someone carries on that activity but does not make a profit. Perhaps that would be sufficient to achieve the objective and not cast the broad net that we are concerned about.

We have one other concern. It is not specifically addressed in the bill but we think it would necessarily result. Business tax is assessed pursuant to section 7 of the Assessment Act, which lists various types of business activities and then imposes the rate of tax. Subsection 7(7) states that where a business carries on more than one business activity, then it is the chief or preponderant activity that determines the rate of tax.

We are concerned that where an association such as CSA is chiefly carrying on activities that should not be caught, but does have some limited activities that could be perceived as being similar to activities carried on by business corporations, the small amount of business activity could taint

the whole operation and subject all the premises of CSA and others like it to business tax.

We think that would be unfair. We suggest consideration be given to amending subsection 7(7) of the act to make it clear that where the chief business or substantially all the business of an entity is not within the definition of business, it should be exempt from business tax entirely. In other words, if subsection 7 is left as it is, it is a 100 per cent test and if you do not satisfy it 100 per cent, it becomes a test where you must score 100 per cent, you would then be subject to business tax on all your premises.

Mr. Kent now will describe to you in summary some of the more important activities of the Canadian Standards Association.

10:20

Mr. Kent: I have brought with me a short description of our basic activities. They are the preparation of standards, voluntary standards and the certification program associated with these standards. If you will bear with me, I will use my written script to make sure that everything is stated properly.

The Canadian Standards Association is an independent, not-for-profit Canadian corporation founded in 1919 with a mission to provide services in support of standardization. Actually, it was as a result of the First World War that the need for standards came to be recognized by the engineering society in particular. This had to do with the failure to provide munitions or ammunition that would work properly with a number of guns that were used during the war.

Through an extensive network of committees of volunteers, it develops and maintains numerous standards in a wide variety of fields. Actually, there are nearly 7,000 volunteers who work on CSA committees, paying their own expenses to attend committee meetings for the good of the community.

The CSA also operates extensive testing facilities across Canada for the purpose of certification of products to those standards. The main area of CSA activity has always been the electrical field. The CSA started to develop standards in 1919 in the engineering field, particularly with regard to roads and bridges. In 1927 it issued the first Canadian electrical code. This code is the basis of all provincial codes, including the Ontario code.

I will deviate from the script now. Initially, certification in the electrical field was offered by what now is called Ontario Hydro which had an approvals division. It used CSA standards as a basis of approval and examined and tested electrical products for compliance to those standards. If the manufacturer complied, it was permitted to apply the Ontario label to the product. This was acceptable for a period of time, but with provincial jealousies, other provinces found it difficult to accept a product based on Ontario's approval. They did not have the facilities to establish similar organizations within their own jurisdictions. They approached CSA to see whether we would be willing to undertake the certification program on behalf of Hydro. We did this. As a matter of fact, a number of Ontario Hydro engineers joined the CSA when this transfer of responsibility took place. In total, there are some 600 million products developed every year that bear a CSA certification mark indicating compliance to a national standard.

We started out in the electrical field. Our next endeavour was in the

field of fuel-burning equipment. Many years ago, the National Research Council conducted a certification program, primarily for oil-burning equipment. When the CSA became well-known in the electrical field, the National Research Council approached CSA to see whether we could offer a certification program for fuel-burning equipment, which we proceeded to do.

After the First World War, the Canadian market was flooded with plumbing products that were of extremely poor quality, and we were approached by the plumbing industry in Canada and by the Central Mortgage and Housing Corp., which is now the Canada Mortgage and Housing Corp., to develop standards for plumbing products, fixtures and fittings and to offer a certification program for those products. We have done this. Through regulation, much provincial legislation in Canada now has made CSA certification a mandatory requirement for the sale of electrical and plumbing products and some heating equipment. Paul mentioned that there are other organizations, such as the Canadian Gas Association, that specialize in the certification of gas-burning equipment.

We have published 1,100 to 1,200 standards, which are under continual review and updating to ensure they address the problems of the day through changing technology. The standards are always evolving.

We have liaison with provincial authorities through a number of councils. The chief electrical inspectors of each province form an electrical safety council. We meet with them and they advise us of their requirements or situations they have experienced in the field that require our involvement or changes to the standards.

Our efforts are primarily in the field of standardization with regard to safety. In the past few years, we have become more involved with products in the health industry. We have standards on child-resistant packaging for drugs and this may now extend to other corrosive materials that have been a problem in the field.

Everybody has received a little background information of a very general type on our activities. Rather than talk in generalities, I would prefer to respond to questions people may have.

While we are a national organization, we offer the certification service to all countries. More than 50 per cent of our certification revenue comes from offshore.

We are nonprofit. We are controlled by a board of directors elected from our membership. Anybody who works on a CSA committee is automatically a voting member of CSA. In addition, we have roughly 1,200 sustaining memberships. These are usually representative of government and industry and trade associations, so it is a complete mix.

One of the requirements in our standards operation is that the committees must come up with consensus documents. They must consider all interests. The committee formations are such that no one segment can overrule the others. There is equal representation of producers, users and general interest groups, including the consumers. Most of our committees now have direct representation right from the housewife level to make sure we have consumer input into our standards. The consensus principle applies.

Paul mentioned that others have entered the area of certification, but I

do not think there is anybody in the field of certification who is also involved in the preparation of standards. This is one area where we are unique in that part of our certification revenue is used to support our standards activities.

10:30

Standards, you must understand, are very expensive items to produce. They are not what you would call best-sellers, with the exception of the Canadian Electrical Code, of which we sell quite a few thousand every year. They are very limited publications, so that even if we do sell them, the revenue from the sale of standards alone does not support the standards operation. We have to support that through our certification fees.

Our revenue and costs are reviewed every year, and our fees are adjusted to ensure there is no excess revenue over cost, other than what we might need for expansion, future development or what have you.

Now that I have covered a reasonable field, I will be quite happy to answer any questions.

Mr. Chairman: Thank you, gentlemen, and thank you for coming on short notice. We had a cancellation yesterday, and you filled the spot, so we understand why you do not have a written brief.

Mrs. Grier: I do not quite understand your revenue for certifications. Can you explain to me a bit more where your revenues come from and what kind of budget you operate on?

Mr. Kent: Yes. The manufacturing clients pay the Canadian Standards Association for the time taken by our engineers and technicians to test and inspect their products and to prepare the certification report if they comply with the requirements.

The normal process is that a manufacturer makes application for certification of an appliance, let us say a kettle. The CSA asks the manufacturer to submit an estimated deposit to cover the costs of the investigation. The engineers and technicians involved with the work charge their time to that job while they are working on it and tell the manufacturer where the product fails.

The manufacturer may have to make changes; he agrees to changes, and eventually the modified product is considered to meet this standard. At that time CSA says, "Okay, now you can mark the product; you can use the CSA label on it." The manufacturer then pays whatever excess is over what we have already charged, or he gets a refund if the deposit was more than sufficient to cover the costs.

Then the manufacturer enters into a legal agreement with CSA by which he agrees to put the CSA mark only on products that are made in accordance with that certification report, so that he will not make any changes to the product without getting prior clearance in a sort of supplementary certification from CSA.

He also pays CSA an annual fee, and in some cases where the products use CSA labels that are purchased from CSA, he purchases labels. The annual fee and the revenue from label sales cover the costs of post-certification inspections at the manufacturing plant.

We make literally hundreds of thousands of inspections across the world every year. Some products require inspections on a monthly basis, others probably two or three times a year, depending on the product and how susceptible it is to manufacturing variances. Some are easy to control; others require a greater surveillance.

At no time does CSA assume the responsibility of the manufacturer and say that our inspection program is his audit. The manufacturer is responsible for the product. Our inspectors merely audit the manufacturers' own controls to make sure they continue to comply with the requirement.

If we find that the product no longer complies with the standard, for whatever reason, whether it has been deliberately changed or a modification has been made, we suspend the manufacturer's right to use the CSA certification mark. Depending on how serious it is, we work with a manufacturer to issue a recall or to issue press releases or bulletins to all the regulatory authorities indicating that these products, in spite of the fact that they had a CSA mark, are not in compliance with the standards and we have issued a recall on them.

Ms. Grier: But then do you build into those fees and charges the costs to you of developing the standards? How does that work?

Mr. Kent: Not directly. We have some standards that are very popular--as I said, the electrical code; and actually, the sale of that standard covers the costs of development of that standard.

However, some standards are virtually loss leaders, and the standards committees try, through grants from an interested party, to collect the money to cover their costs; but they are not always successful. They may approach the industry concerned and ask, "Can you support this standards activity?" Then we transfer a sum necessary to support that standards activity from our certification division to the standards division, so it is actually taken from all of the certification fees. I think we transferred 7.5 per cent this year to our standards operation from our certification division as standards resource support.

Mrs. Grier: If I may ask one more question, can you give me an example of an organization that is doing the same kind of thing commercially with which you feel you might be confused if this amendment were adopted?

Mr. Kent: Warnock Hersey Professional Services is one. It is basically a testing organization that has expanded in the last five or 10 years into the area of standards, or into the area of certification, where it does follow-up inspections in the manner that we do. That is the only specific commercial operation I can think of that actually conducts a certification program, and it is profit oriented.

Mrs. Grier: Thank you very much.

Mr. Sargent: What government grants do you get, say, from Hydro and the government ministries?

Mr. Kent: We do not get any direct grants. Ontario Hydro, for example, has 10 or 12 sustaining memberships with the CSA. A sustaining membership is \$300, so in total direct grants from the Ontario government, we might get \$3,000 or \$4,000.

The main value that we get from governments is in the volunteers who work on our committees. We have any number of people from Ontario Hydro, for example, who work on our electrical standards on a voluntary basis. We are getting more support from some of the governments now where they want specific standards. We have been approached by the Department of Transport in Ottawa to develop standards for the movement of hazardous products. We have quite a large program of standards development in that area.

Mr. Sargent: Is there anything in the nuclear field?

Mr. Kent: We do have nuclear standards. There again, I do not think they were directly sponsored by any branch of the government.

Mr. Sargent: Where do you get your input for nuclear knowledge?

Mr. Kent: From universities, from Atomic Energy of Canada, from Ontario Hydro.

Mr. Sargent: Are you working on any project for the disposal of spent fuel rods?

Mr. Kent: Offhand, I do not think so. I am not in the standards division. With 1,200 standards--

Mr. Sargent: What do you charge for CSA approval? That is where you get your money, is it? From approvals?

Mr. Kent: Yes. I should point out that we do not approve; we have no authority to approve. As a private organization, we certify products for compliance to our standard and permit the manufacturer to use our mark. The only control we have is the use of our mark. If the manufacturer does not comply with the requirements, we can prohibit his use of the mark or put an injunction on his use of the mark.

Mr. Sargent: Just a minute. If a person has a gadget on the market without your approval, what happens?

10:40

Mr. Kent: Ontario Hydro will prohibit it. Ontario Hydro has regulations under the Power Corporation Act which state that before an electrical product can be sold or offered for sale in Ontario, it must be approved by Ontario Hydro.

Those regulations also state that certification by the CSA is tantamount to approval by Ontario Hydro. Ontario Hydro recognizes our mark as compliance with the regulations it enforces.

Mr. McKessock: You do not get one without the other.

Mr. Kent: No. However, you can get Ontario Hydro approval without CSA approval.

Mr. McKessock: Because they have not been brought to you?

Mr. Kent: Yes. Or Ontario Hydro may offer a service for one of a kind or a very limited number. The manufacturers can get similar acceptance in any province, but all provinces recognize CSA certification. Any manufacturer

who wants to sell his products nationwide will automatically choose to come to CSA because he knows that with CSA certification all the provinces will accept the goods.

Mr. Sargent: What is your parallel association in the United States?

Mr. Kent: The closest one is Underwriters Laboratories Inc. They work out of Chicago and California. They are a certification organization similar to CSA. The basic difference is that their standards committees are not composed of volunteers. They are not consensus standards. Ours represent user, producer and general interest groups. UL standards are normally developed by UL staff.

Mr. Sargent: Where do you get your money?

Mr. Kent: From the manufacturers who submit their products for certification.

Mr. Sargent: For approvals.

Mr. Kent: Yes.

Mr. Sargent: What do you charge for an approval?

Mr. Kent: It depends on the product and the hours we spend on it. Some certification charges may run \$1,000 for a product. If there is a big line of products, others may run \$5,000, \$6,000 or \$10,000.

Mr. Sargent: I have known it to take a month to get an approval from you. What did that cost?

Mr. Kent: Over the past three or four years, our biggest objective has been to reduce the time required for certification. We are now working towards a goal of four weeks from the time of submission to the issuance of certification, plus test time.

You must recognize that some products that are thermostatically controlled, for example, might have to go through 500,000 cycles of operation and that this in itself might take several weeks. We cannot control that time. In effect, that time is spelled out in the standard.

According to the latest statistics, more than 70 per cent of our certification applications were processed within 16 weeks. Most of the manufacturers who are familiar with CSA processes do not have a problem. They have their own engineering operations and they submit their products for certification early in the development cycle.

Mr. Sargent: Are you in Hydro's pocket?

Mr. Kent: No. Depending on which group of people we deal with, the manufacturers might say we support the regulatory authorities too strongly; some of the regulatory authorities say we represent the manufacturers too strongly. We are in the shuttlecock position of being batted from both sides.

Mr. McKessock: I have a supplementary.

Mr. Chairman: We must conclude this very quickly. It is all very interesting, but we have gone away from assessment. You may have a short one, Mr. McKessock.

Mr. McKessock: It is just a technical point. You said you do not approve, but I thought the sign said "CSA approved."

Mr. Kent: No; it is certified.

Many years ago, when we first took over from Ontario Hydro, we used the term "approved." It was pointed out very strongly to us by legal counsel and others that we do not have the authority to approve.

Mr. McKessock: What is the difference between "certified" and "approved"?

Mr. Kent: "Certified" means that we put our mark on the product as complying with a standard; approval is the responsibility of the authority saying that you can or cannot sell that product. Approval for sale is what Hydro officials or organizations such as the Canadian Amateur Hockey Association do. It may say that anybody playing hockey in its association must wear a CAHA-certified hockey helmet, for example.

We are in a very wide area. We started in electrical, but there are not many fields in which we are not involved in one way or another, primarily still in the area of safety.

Mr. Pollock: Do you accept any liability yourselves if the product does not pan out?

Mr. Kent: Our counsel should probably answer that, and he can correct me if I am wrong. In the manufacturer's certification agreement with the CSA there is an indemnification of CSA. In other words, the manufacturer accepts the responsibility to ensure that the product complies with the standard before he puts the CSA mark on it.

We have been involved and we still are involved with some legal cases where a product has failed. The manufacturer is being sued and the manufacturer, in turn, has made CSA his third party on the basis that perhaps the standard was not adequate. Even if he complied with the standard, maybe the standard had a shortcoming. This is what I said earlier: The standard is evolving at all times, because if we waited until a perfect standard was developed, it would never be published. You do not know what is going to happen in the field.

Mr. Chairman: Thank you, gentlemen. To keep on time, we must move along. Maybe the two members who have questions can consult with you now that we have concluded this. It is a very interesting presentation, but we must stick to the items that have to do with assessment.

The next one and some that come later in the day will be interesting. We are on malting next and then on to distilling. Some may have questions that do not apply to assessment as it applies to taxes. Thank you very much.

Mr. Kent: Thank you.

Mr. Fox: Thank you for your time.

Mr. Chairman: The next presentation is from Canada Malting Co. Mr. Mackay is the vice-president. Would you come forward, please, Mr. Mackay, and any others who may be with you?

CANADA MALTING CO. LTD.

Mr. Mackay: There are no others. This is a solo flight.

Mr. Chairman: A solo flight? Welcome.

Mr. Mackay: I have a prepared presentation, which I will read to you. I understand there is a copy for each of you.

Prior to the introduction of Bill 131, I wrote to the Treasurer (Mr. Nixon) and commented briefly on the impact of the proposed legislation, which might increase the tax burden beyond a reasonable interpretation of the existing Assessment Act.

In his reply he remarked that the Supreme Court of Ontario had made decisions that extended the existing exemption under paragraph 17 of section 3 to buildings and structures associated with manufacturing. Since the court must rule within the framework of the law as written, surely the courts were in fact correcting improper assessment interpretations by the assessment department. Mr. Nixon also pointed out that it was not the intention of the proposed legislation to extend realty tax liability to any buildings never previously assessed.

The courts have clarified any previous misinterpretations of machinery and equipment by assessors under the act, so that one must accept the courts' findings and accept that the corrected assessments are the proper ones. However, the Treasurer goes on to state that he introduced Bill 131 in the Legislature for clarification purposes and in response to revenues lost by the municipalities as a result of these court rulings. According to the courts' rulings, the municipalities should never have had the revenue. Therefore, the effect of the proposed legislation, if unaltered, will be to extend realty tax liability.

Mr. Nixon states that his officials will establish guidelines for the assessors, which will be available after the bill is enacted. It is therefore extremely difficult to respond to any proposed guidelines at this time.

10:50

I have prepared some information about the malting process and applicable equipment usage, which I would like to review with you now to enhance your understanding of some amendments I would like to propose to paragraph 17 of section 3 of the Assessment Act.

Bins and silos onsite at malting plants are required for handling materials in process. The barley received at Calgary and Thunder Bay arrives in a state that requires some preprocessing before it can be used. The rationale at these plants for having bins and silos is to accommodate the requirements necessitated by the process.

Segregation involves binning barley by crop year, variety and protein level. Subsequently, the barley is cleaned of all impurities; that is, dust, chaff, foreign seeds and other grains are removed. Cleaned barley is segregated according to size prior to processing. The malting process is a natural process in which the barley is steeped, germinated, kilned, aged, blended and cleaned before shipping to the customer. The steeping, germinating and kilning steps take place on a batch basis over approximately eight days and cannot be interrupted once commenced.

Ageing is an integral part of the process as malt shipped straight from the kiln cannot be successfully brewed with desirable results. Blending is necessary to meet customer specifications on the character and quality of the malt and to even out processing variations that take place. These steps are vital to producing a consistent, high-quality product demanded by the brewing industry.

The recognition of storage bins as process equipment at malting plants is traditional and is covered already under a Department of National Revenue ruling to that effect. A copy is enclosed for information purposes.

Once steeped in tanks housed in a steep building, the barley is moved in batches into atmospherically controlled chambers called germination compartments. Depending on the location, our batch sizes range from 110 to 280 metric tons in weight by the time they are moved on from germinating to the kilning part of the malting process. For reference, a 280-metric-ton batch is equivalent to about 600,000 pounds.

The germinating compartments are fed attemperated and humidified air that is drawn down through the bed of grain and exhausted from a chamber below the bed. Temperature, air velocity and humidity control are essential to the life processes occurring in the grain. The structure is also equipped with recirculating air plenums.

There are a number of different designs of malting facilities in general use. The most common is a concrete bed with perforated floor and supporting air systems that are an integral part of the germinating structure. These can be arranged as rectangular beds laid out in parallel or as round beds stacked in a concrete tower. Another design is a drum machine with integrated supporting systems that is housed in a surrounding building.

Kilns are usually arranged in horizontal beds built into the structure through which heated air is moved for drying and kilning purposes. Where germinating compartments and kilns are arranged as described, the result is highly specialized, windowless, stairless structures. These structures, while resembling buildings in outward appearance, are in fact the equipment, not buildings such as one would use to house drum malting machines. This is the distinction I wish to bring to your attention.

The recognition that these structures should not be assessed as buildings under the exemption provided in paragraph 17 of section 3 of the Assessment Act is the subject of current appeals applied for by Canada Malting Co. Ltd. under section 50 of the same act.

I propose that section 2 of the proposed Bill 131 referring to paragraph 17 of section 3 of the Assessment Act be altered by replacing the wording of section 2 with the following:

"The exemption from taxation under this paragraph does not apply to:

"(a) a structure which is a silo, a tank, a bin or similar type of structure which is used exclusively for storage other than as part of a manufacturing process."

It is not our intention to challenge the propriety of assessing structures used for storage or buildings that house the machinery used in a manufacturing process, but assessment should not be applied by mistake to structures that are part of the processing equipment simply because the

materials used or the exterior shape may be common to some buildings or storage vessels.

Are there any questions?

Mr. Sterling: First, I have a question of the parliamentary assistant to the Minister of Revenue. When we were dealing with this piece of legislation, I asked whether the intent of the legislation was to change the rules with regard to long-standing practices in taxation of real property or business. I believe the answer at the time was that it was to clear up situations that had arisen in the past two or three years because of "a perceived loophole" in the act. That was my understanding of it. Therefore, I wonder how you respond to the suggested amendment here, because it does not seem to effect that original intent in any way. I am quite willing to put this amendment in front of the committee at some time to cap these hearings.

Mr. Epp: I would have to discuss this proposed amendment with Mr. Lettner, but I do want to reiterate what the minister has said on a number of occasions; that is, the intent of the legislation is to clarify and not to add any additional businesses on to the assessment or anything of that nature. It is strictly to clarify.

Mr. Sterling: Or to change the long-standing rules with regard to the taxation of manufacturing equipment; that is not your intent?

Mr. Epp: No, it is not to alter that at all. The necessity of this legislation has been brought about by the courts and strictly that. I do not know whether Mr. Lettner wishes to comment on this proposed amendment.

Mr. Lettner: It limits the exemption to structures which are only silos, tanks or bins. That is the first thing; there is another thing too.

Mr. Sterling: I agree. I jumped ahead and read the brief of the next proponent, and I think they have included two things there.

Do you have any objection to amending that section to use this form of words rather than the form of words that have been used here? Is there an objection on your part, or does it reach the same intent?

Mr. Lettner: No, I do not think it reaches the same intent.

Mr. Sterling: What is the difference?

Mr. Lettner: To start with, it is talking about "used exclusively for storage." What does "exclusively" mean? If you put something in there other than the grain, then it is not an exclusive use for storage to keep rats or vermin out.

The other thing is, it may be part of the manufacturing process. As the minister can tell you, there are cases where even though a storage facility is not on the same grounds or enclosed by the same fence--it could 20 miles away--it is still used in the manufacturing process. Any activity or item you put into a storage silo or structure would not be exclusively for storage.

Regarding the last part, that it is part of the manufacturing process, I am not too sure how much that would cover. It could cover a great amount of ground.

Mr. Sterling: I guess my problem is that there is a stated intention on the part of the government to maintain the status quo as to the taxation for real property and business property purposes in terms of the manufacturing process, including storage as part of the manufacturing process. In other words, storage facilities have traditionally been maintained as taxable for realty and business taxes. Manufacturing processing equipment, I guess as a stated policy of governments over the years, have been exempt from that taxation, which I think is a good thing in terms of the makeup of our province.

11:00

I hear a complaint about the words that are being used to put that policy forward, and I would like to clear up those words to put that intent into legislation. From the list of witnesses we are going to hear over the next while, I suspect that this issue could recur, as it does with the Canadian Portland Cement Association. It is the same issue they are talking about.

Mr. Epp: Mr. Sterling, I am going to ask Ms. Elizabeth Patterson to respond to that. She is the Ministry of Revenue solicitor.

Ms. Patterson: With respect to the amendment that the gentleman has brought before the committee, our concerns are as Mr. Lettner has described them. They deal with specific wordings that limit the configuration of the structures described. They speak about exclusive use for storage when in fact storage might involve venting to prevent heat buildup or, as Mr. Lettner suggested, it might provide for some sort of activity that maintains the status of the materials stored. It also talks about something that is part of the manufacturing process which might mean something that encloses or shelters or provides access to a manufacturing process.

The distinction that we feel has always been present in the Assessment Act, and that has been somewhat muddied by some recent court cases, is the distinction between something that is a building or structure and something that is machinery. It is not our intention to exclude, nor do I think the word "structure" will extend to excluding from this exemption machinery that is a construct, an item that itself is actively and actually involved in the manufacture of goods. We are attempting to exclude buildings and structures that provide enclosure or shelter or access to machinery and equipment.

When the Treasurer says we do not intend any changes, that is what he means. I think that was the understanding before these most recent court cases, which imported some relatively new tests having to do with integration and the necessity for buildings to be part of the manufacturing process to the equation that everyone had understood.

Mr. Sterling: I have a legal background, and I do not know the case law involved in the wording of these particular sections, but there has been significant litigation over them, and my concern is that I want to have the act reflect what the Treasurer's intent really is. I also want you to work with whoever the people are that are coming here to reach that intent, so there is not a continuing string of cases about what the words mean. I want it in legislation. I do not want it in policy.

Therefore, I would ask you to comment on those words.

Mr. Chairman: Two points have been made here, as I understand it. One relates to the wording of the act and that it has been changed to clear up

any misinterpretations, and the other is that it does not involve a change in interpretation in any way but is merely clarification.

If you examine the wording in section 2 of the bill, it suggests that a building or structure is assessable, notwithstanding the fact that it forms an integral part of manufacturing or farming machinery or equipment or of a manufacturing process or farming operation. Therefore, when you say you are trying to restrict the assessment to buildings or structures that protect or house machinery, the wording of the act goes beyond that and says, regardless of whether it forms an integral part of the equipment or not, it will be assessable, if I am reading this correctly.

The other thing I understand is that the concept of integration has been a long-standing assessment practice in this province for at least 40 years, and that the wording of this section, as it is written here, seems to change that and that is the basis for our objection.

Mr. Sterling: You are saying that the wording as submitted in Bill 131 basically changes the assessment system that has been in place for 40 years.

Mr. Mackay: That is the information I have.

Mr. Sterling: The amendment you are proposing, in your view, would maintain the integrity of the intent of the Treasurer but also would maintain the integrity of what the rules have been for the past four years?

Mr. Mackay: In a specific sense, obviously related to the industry that I am involved in. I do not have a problem with the existing legislation, but if the Treasurer feels he has to change it, I think the wording I am suggesting is consistent with his stated intention in his response to me.

Mr. Sterling: Mr. Lettner, would you or your counsel like to respond?

Ms. Patterson: The basic difference of opinion we can identify is that we do not agree with the submission that by speaking about buildings and structures as something distinct from machinery and equipment, that by using the word "structure," we have somehow created an exclusion from this exemption that is broad enough to exclude the machinery that has been exempt under the Assessment Act for the past 40 years.

We are trying to draw a distinction between that machinery and more passive, building-like structures that house and support and provide access to those historic items that were called "machinery," which recently have been held by the courts to be exempt as machinery and equipment because they are necessary to a production process, although they may not necessarily be part of that production process.

If anyone needs a building in which to house a production line, and in that sense it is integrated with the manufacturing process, but that building does not necessarily perform a manufacturing function, it is not necessarily machinery and equipment. Where a structure is machinery and equipment and is performing a manufacturing function, then we are not attempting to exclude it from the exemption. The only structures we are trying to exclude are passive buildings that provide access support, housing coverage, enclosure.

Mr. Sterling: Did you not just say you were trying to widen the net?

Ms. Patterson: No. I think that distinction was always very clearly made in cases over the past 40 years, but some cases in the past two or three years have broadened that traditional understanding to look not at what was actively participating in a manufacturing process but at what was necessary to it and to start to look at buildings; no one would operate a production line without a building to enclose it. They started to look at those tests and, in the one case the ministry has been successful in, the Metals and Alloys case, the court did draw that distinction between structures that are machinery and equipment and structures that provide support to machinery and equipment and said those structures were in the nature of buildings.

Mr. Mackay: Your comment, using the term "passive" to describe a building, is a very good one. "General purpose" might be another where you could put any process within it and it would function just as well for a different process. Is that what you mean by "passive"?

Ms. Patterson: As before, there will always be a line to be drawn between structures that are machinery and structures that are passive, and that line drawing will still have to go on. We do not want to see that line drawn on the outside of buildings and structures that enclose and house that are entirely passive.

11:10

Mr. Mackay: The wording of this section 2 does not really allude to the passiveness of a building. It seems to include everything rather than to exclude those that are of a passive or general purpose nature.

Ms. Patterson: You have to read the section in the context of the case law, which I am sure you are familiar with, which talks about definitions of machinery and about the degree of involvement in a manufacturing process that is necessary for a structure to be called machinery rather than a building. The distinction that is drawn in the most recent case, the Metals and Alloys case, is an item, which is an absolutely neutral term. They try to decide whether that item, as a building or structure, is machinery or equipment.

Those are distinctions that courts are still going to have draw. It is just that we do not want to become involved in the notion that an item that is a structure, and not machinery or equipment, should somehow be exempt because it is part of a manufacturing process and necessary to a manufacturing process.

Mr. Mackay: I do not quarrel with that concept. I believe the wording falls short of that goal.

Mr. Sterling: We are probably going to hear more on this issue from the next submission.

Mr. Guindon: Does your company have a malting facility in other provinces?

Mr. Mackay: In the city of Calgary, Alberta, and in Montreal.

Mr. Guindon: How are you assessed in those provinces?

Mr. Mackay: I am not certain. I am sorry.

Mr. Guindon: That is all.

Mr. Chairman: Thank you very much, sir. We will take under consideration in our recommendations the points you made.

Next we have a presentation from the Canadian Portland Cement Association. We have Mr. DeWitt, a senior vice-president of St. Lawrence Cement, and Mr. Poole and Mr. Milligan, who are counsel. Please come up to the mikes and make your presentation. There is in members' folders a copy of the presentation, which may be followed. Please identify your people.

CANADIAN PORTLAND CEMENT ASSOCIATION

Mr. Poole: My name is Richard Poole; I am a solicitor. Peter Milligan is also a solicitor. Frank DeWitt is vice-president of St. Lawrence Cement, and Vic Perry is the executive director or manager of the Canadian Portland Cement Association.

I understand that a submission was delivered to the committee this morning outlining certain of the concerns of the portland cement association with respect to section 2 of Bill 131. Contained in that report is an analysis of what is perceived within this association to be the impact of Bill 131 in its present form.

I can advise the committee that there are other very interested groups, which I am sure the committee is aware of, from which it will be hearing over the course of its sessions and that will likewise be bringing forward real concerns about the purport of section 2 of Bill 131.

I want to address my comments first to what in our view appears to be a complete misconception by certain persons about what Bill 131, section 2, is going to do. On behalf of the portland cement association and on behalf of other associations that we have the pleasure of representing, we have no difficulty whatsoever with the intent of the Treasurer (Mr. Nixon) in bringing forward Bill 131, section 2.

Nobody likes municipal taxes; nobody in the industrial sector likes municipal taxes; I do not think any of us like any type of taxes. However, there is a feeling that the system as it currently exists for the industrial sector is fair. The tools of the trade, the machinery and equipment by which products are manufactured, are exempted, but the ancillary items--the storage facilities and the buildings--are taxed, so that there can be relatively equal treatment among various types of taxpayers.

I should advise the committee as well that I am a little surprised by the comments that were made by the solicitor for the ministry in answer to Mr. Sterling's question, because we have, over the past several weeks, had the opportunity to meet with representatives of ministry staff to work out alternative wording that would prevent the real concerns in the industrial sector and at the same time carry forward the intent of the Legislature. I had understood that the alternative wording was virtually 99 per cent acceptable to staff. If that is not the case, then I can go further in my presentation and discuss where we are coming from.

If you look at page 2 of the portland cement submission, you have the legislation that we have discussed and have proposed to implement the intent of the Treasurer. I would ask you first to go to section 2 of Bill 131 as it is before the committee. The section is to be read, of course, in conjunction with the exemption, and the exemption covers machinery and equipment used for manufacturing purposes.

Mr. Sterling: It is a little confusing because we are talking about exemptions from exemptions. First, what reads in front of this?

Mr. Poole: If you go to page 1 of the submission by the portland cement association, you will see, first, how subsection 2(1) is set forth in Bill 131; then you will see how paragraph 17 of section 3 reads now. The existing exemption is for "All machinery and equipment used for manufacturing or farming purposes," subject to various categorizations for machinery and equipment used to the extent required for lighting or heating. That is if you have a huge boiler facility at an industrial plant. You heat the building from it, but you also fire your blast furnaces. A proration has to be implemented to allow some portion of that machinery equipment to be taxed for building purposes. Generally speaking, what the exemption does is to exempt machinery and equipment used for manufacturing purposes from taxation.

Mr. Sterling: If we can use your operation, portland cement, it would include all of the crushing equipment and all of the manufacturing part of making the cement.

Mr. Poole: That is right.

Mr. Sterling: But this section would also include maybe the storage tanks as well. What you are talking about is the whole plant.

Mr. Poole: That is right.

Mr. Sterling: That is what this section says, and then the exemption part is what is cut out of that, overall.

Mr. Poole: That is right. The act directs that all real property be assessed. Everything that is fixed to the realty with any degree of permanence is subject to assessment. Ironically, all machinery and equipment in Ontario is subject to assessment, although in fact it is not assessed. Then from that assessment, there are certain exemptions from taxation. There are some 22 paragraphs listed in the act to exempt from taxation certain real property, certain fixtures, certain items that are attached to the realty, one of them being for machinery and equipment.

11:20

The import of section 2 of Bill 131 is as follows, and I think a number of people are getting carried away with the "notwithstanding" section of section 2. I think it should start simply by reading: "The exemption from taxation under this paragraph does not apply to a building or a structure."

That is what the legislation is saying. In all circumstances, notwithstanding that a structure forms an integral part of a machine--that is, it is physically part of a machine--it is also a structure, and notwithstanding that it may be part of an overall manufacturing process in function, it will be taxable. No matter what that structure is, no matter what that structure does, no matter how important it is to the making of a product, this section declares that structure to be taxable. In so doing, it runs completely contrary to the seminal case, as I want to call it, the 1953 Labatt's case, which started this whole thing.

In 1953 the breweries went to court and asked that their fermentation tanks, brew kettles and bottling vats be exempt because their fermentation tanks were essential to make beer--that is where the beer is fermented--and

the bottling tanks are essential to feed on a continuous basis the bottling process or the machine by which beer is bottled.

The courts said: "Yes, those items, such as the tanks, are extremely important. They are integral to the manufacturing process. You cannot make beer without them. Therefore, they are exempt." The court also said, and from the ministry's interpretation of the case I think it is giving real concern, although it is quite clear in the reading, that those things were structures.

Therefore, a brew kettle is a structure. A blast furnace at a Stelco or Dofasco plant is a structure. A fermentation tank is a structure. In the portland cement industry, all these clinkers and these vessels in which cement is manufactured are structures.

It is wrong to come forward and say, "You have no problem here," because the first question is, is it a structure? If it is a structure, this section of Bill 131, as put before this committee, will declare it taxable. That is industry's concern.

Mr. Sterling: May I stop you there? Do you want to respond?

Ms. Patterson: Yes, if I may. The act itself uses the word and the concept of "structure" as something that is not synonymous with machinery; it is exclusive of machinery.

For example, the definition of "land" in the act talks about building structures, machinery and fixtures, which would tend to suggest that if "structure" were broad enough to cover machinery, there would not be any need to include the word "machinery" as well as "structure." They could simply use "structure."

In the context of this paragraph 17 exclusion from the exemption that we are discussing, if one accepts the broadness of the use of the word "structure" that Mr. Poole is suggesting to you, I agree that the logical conclusion is that virtually all machinery would be excluded from the exemption. It is a machinery-and-equipment exemption.

Using "structure" in that broad context makes nonsense of the whole paragraph to which it is attached. I do not think you can use the word "structure" that broadly in the context of this exclusion from the exemption. It must mean a structure that is not machinery and equipment. Machinery and equipment have a long jurisprudence attached, including the Labatt's case, to which Mr. Poole referred. With respect to the equipment that he has described and that has been considered to be machinery and equipment in that long history of jurisprudence, we accept that it is not a structure, it is machinery and equipment.

Mr. Sterling: What objection do you have to their wording?

Ms. Patterson: Assuming that their wording is the wording put forward by the previous delegation--

Mr. Sterling: That is part of it. Do you have the brief there?

Mr. Chairman: It is on page 3.

Ms. Patterson: I think two of the three exceptions taken to the previous draft amendment are that it describes silos, tanks, bins and similar

types of structures, which limits the exclusion to certain configurations of structure; and second, that it talks about something being a part of a manufacturing process, which I find to be a somewhat amorphous description in a context in which cases are being presented to us, where buildings, real buildings that enclose only equipment, are described as being part of a manufacturing process because they are necessary to it.

Mr. Poole: If I may reply, first, I do not want to get into an airy-fairy argument about whether a machine or a building press is a structure. I can tell you quite clearly that under the John Labatt case vessels, tanks, bins, fermentation kettles and glass furnaces are structures. That is in fact where the court started to say, to go forward, that because it was directly involved in and integrated with the manufacturing process, it would nevertheless exempt it as machinery.

If the bill's intent is not to extend one bit--and I think the Treasurer was very clear in the House about maintaining the status quo--the effect of the bill will definitely be to pick up fermentation tanks and the vessels in which cement is made, definitely carry it to at least that level. Whether it goes further, esoterically, into an actual piece of hard machinery is something that can be further debated.

Second, the problem has been the question of storage. The problem in the Nabisco cases, PPG cases and the portland cement cases is the view of the ministry that these tanks, which are subject to the litigation, are storage tanks. Because you put some rat poison or something else in, you may change the character from storage. None of these cases can finally determine--this legislation is pre-emptive of judicial interpretation of the Court of Appeal, which is also very interesting.

The question, though, of the word "exclusively" was raised initially at our meetings with staff. Upon further review, we formed the opinion that perhaps they had a point; that perhaps the word "exclusively" ought to be left out so that a taxpayer could, in effect, create an exempt item by throwing a little bit of stuff into what is essentially a storage tank. We yielded and said to take the word "exclusively" out and therefore leave the fundamental principle that if it is basically a storage tank, then the storage tank continues to be taxed.

The reason for "other than as part of a manufacturing process," which is causing counsel some concern, is that historically, and again in maintenance of the status quo, surge tanks have never been taxed. Surge tanks are those halfway through a process. You fill it up, because if you have an A, B, C, D process, perhaps C has higher volumes than A and B, so you have to surge into a tank to hold enough product from B of your process to carry forward into C.

Historically, those types of tanks have never been assessed, and the reason we suggested this wording was simply to say that these are not really storage tanks, because they are surge tanks in that regard. We agree as well that there could be a concern about buildings. The Court of Appeal in the Metals and Alloys case referred to by counsel for the ministry did say that buildings should not be exempt under virtually any circumstances. However, there was some question of whether some ingenious legal counsel could come forward with an ingenious argument to exempt a building. We felt it appropriate in discussions with the ministry to deal with the question of a building, which would be in keeping with jurisprudence in other jurisdictions; for example, in England, where over the course of the years they have through

jurisprudence come to the conclusion that you cannot exempt buildings as part of plant, machinery or equipment.

11:30

That is basically where we look to it and where we dealt with the ministry and tried to come to alternative wording. The fundamental question is--I do not want to get into a detailed legal debate. My friend Peter Milligan here has been involved in a number of cases that fine-tune and deal nicely with the fringes. It seemed to me quite clear from the statement of the Treasurer (Mr. Nixon) that they were worried about a few things. They might be worried about buildings because of Metals and Alloys and they might be worried about tanks, bins and silos. That is exactly what he said on July 10 on the floor of the House. These are cases before the courts. These are the cases that in the past two or three years may have been perceived as trying to expand the exemption. Surely, these are the cases and circumstances that should be addressed unless there is a hidden agenda to take significant exemptions away from machinery and equipment.

We will bring forward to the committee, as has been done in this presentation, presentations showing that for the brewery industry, for example, you are talking about tens of millions of dollars difference. If the fermentation tanks, brew kettles and facilities used for the manufacturing of beer are taxable, the tax consequence is up to 50 per cent per brewery. Any manufacturing process that involves liquids or powders has to utilize vessels to make the product. If you convert to a liquid, you have to put it in a vessel. You cannot cook soup without putting it in a pan. You cannot cook liquid in a pressure cooker without having it in a vessel. A vessel is a structure.

Mr. Sterling: You can cook soup in a tin.

Mr. Milligan: A tin is a vessel.

Mr. Poole: A tin is a vessel. Some of these tanks you will see in the pulp and paper industry are just big tins.

Mr. Milligan: That is the difficulty the Canadian Portland Cement Association sees with the proposed language. There are the clinker silos, the blend silos for the dry material as it goes through the process. It is mined, crushed, checked for its level of moisture, crushed again, mixed, blended and then fed to a kiln. Without all those vessels, they have no process. Those are the very silos the Ministry of Revenue has been arguing are taxable as storage. They are anything but storage in terms of the operation of a typical portland cement plant.

I understand there has been some concern before this committee as to the notion of a loophole. I wish to dismiss that at this time because I have been involved in several of the cases that came forward to the courts that must be considered as to taking advantage of a loophole. If you look at the submission on behalf of the Canadian Portland Cement Association, particularly the section that deals with the present litigation on page 11, the taxpayers who came forward to the courts came forward only after they could not get satisfaction by discussing the matters with the local regional assessment offices.

They had items such as holding silos for the partially crushed stones--in other words, surge silos--the silos that actually fed kilns,

clinker silos that held the material after it had gone through the kiln but before it was further crushed and processed and mixed into the final portland cement product, and preheater towers that in certain locations in Ontario had already been treated as exempt from taxation by certain assessors, but there was an inconsistent application of assessment technique and practice. In the case of St. Marys--I represented its litigation--and in the case of Canada Cement--I represented its litigation--there were other situations where those items had already been held as exempt simply through a matter of assessment practice.

Mr. Sterling: Can I stop you at this juncture? Is it the intent of the ministry to tax these various silos we are hearing about? Are you saying that clinker silos or kiln feed silos should be taxed?

Mr. Lettner: I am not that familiar with the cement industry, Mr. Sterling, but I say that silos used for storage should be taxed.

Mr. Sterling: In essence, you have something about which they say--this is where I imagine the litigation arises--part is used for the manufacturing process and part is used for storage. There has to be storage. If you move a bottle of beer from one end of the plant to the other while it is being manufactured, there are certain times when it is being stored as well. I imagine the case now is that unless it is clearly storage, it is exempt.

Mr. Lettner: Yes.

Mr. Sterling: Maybe you can describe it. What is a clinker silo?

Mr. Milligan: A clinker silo is basically a large concrete cylinder that holds the sintered material. In other words, when you take the raw material and run it up those huge kilns we have all seen--as you drive along Highway 401 you can see them--and it comes out the other end, it has to go somewhere before it goes into the mill where it is actually milled down to the finish of fine portland cement, which will pass through a fine mesh screen. The clinker is the material that comes out one end of the kiln, goes into a big cylinder and from there goes out as the mill takes it to grind it down to fine portland cement. The two may work at different speeds so there is a surge principle there. Any industrial engineer will tell you there is an element in the nature of industrial storage within the process.

The difficulty these taxpayers have had, and you are going to hear from other taxpayers who have had similar difficulties with the Ministry of Revenue, is that the assessors do not seem to understand the principles by which manufacture occurs. Hence, you get this inconsistent practice out in the field, and hence our very significant concern about any suggestion that these situations would be handled by policy to be applied in the field.

Mr. Sterling: Mr. Lettner, you have heard what a clinker silo is. Is it your intent to tax it or not?

Mr. Lettner: If it is used strictly for storage, then yes, it is our intention to tax it.

Mr. Sterling: Even if it is in the middle of a manufacturing process?

Mr. Lettner: Yes.

Mr. Sterling: So you are changing the tax structure.

Mr. Lettner: No. We have them assessed now.

Mr. Sterling: All surge tanks are--

Mr. Lettner: I am not talking about all surge tanks, but Mr. Milligan said he has taken the appeal to court. I think he has won the appeal at the first court.

Mr. Milligan: That is correct.

Mr. Lettner: They were used for storage. They are not machining equipment.

Mr. Milligan: No. The courts are of the view that these particular silos are integral to the process by which portland cement is manufactured, that they are not used for storage but are part and parcel of the equipment by which portland cement is manufactured. That is the fundamental change that the proposed language of subsection 2(1) will make to the industrial community at large. I do not want to go over what Mr. Poole indicated earlier, but it is the intention of the ministry to change fundamentally the practice that has been in place for some 40 years and these types of structures will become taxable.

I want to go back to the point that this was taking advantage of a loophole. There was no loophole. Industry has been quite satisfied, other than in certain isolated instances, with the treatment of process bins and surge tanks. It has also been satisfied with the taxable nature of pure storage. In other words, no claim was raised by St. Marys Cement or Canada Cement, for which I acted as counsel, that the silos at the end of the process, which housed the finished product, were anything other than taxable. We never made a claim for those. I might add that other taxpayers who have found certain inconsistencies, misunderstandings or an inability of the Ministry of Revenue's assessors to understand the manufacturing process have made that claim as well.

11:40

There has been no difficulty in the mind of the Canadian Portland Cement Association or with those two particular taxpayers with the notion that finished product, which you are in the nature of warehousing, is taxable. However, there is a fundamental difference with Mr. Lettner as to the true nature and purpose of these items. As Mr. Poole indicated, none of this litigation is complete but the courts have consistently held in these cases that these large concrete cylinders in the midst of the process, holding materials that go in and out at different rates of speed, are integral to the process and are exempt.

Mr. Lettner: I refer the members of the committee to page 42 of the blue book:

"St. Lawrence Cement Inc., Supreme Court of Ontario (1985):

"The clinker silos and packing bins of a cement manufacturer were held to not qualify for an exemption from taxation as machinery and equipment used

for manufacturing purposes because the contents did not go through any physical change while in the silos and bins."

Mr. Milligan: May I answer Mr. Lettner? First, I am aware of that case. I mentioned in my brief on page 12 that the court had no difficulty with a claim made by St. Lawrence Cement. The claim for the packhouse or finished materials silos was rejected by the courts. We acknowledge that. However, in the two cases I was involved in, and this has been discussed with the association, the association's view is that those are in the nature of storage of finished product in the nature of warehousing.

Also, as Mr. Poole indicated earlier, there is significant concern on the part of the association that the present language of subsection 2(1), far from simply dealing with the items that are addressed in the present litigation, would extend to many other items that currently are utilized in the manufacture of portland cement. We are referring now to items such as the kiln itself which is clearly a structure, the foundations of that kiln which are clearly structures, and there are many other structures located on a plant itself that would become in our view taxable for the first time.

I direct you to the first full paragraph on page 10 of my brief. The economic impact of that was analysed.

"We would also view the impact of the proposed subsection 2(1) resulting in taxation of items such as kilns, process, surge or blend tanks or silos, preheater towers and the like as discriminatory in nature. If implemented, there would be no doubt that other industries which rely on machines with moving parts to achieve the manufacture of their product would still receive the benefit of exemption, while our industry which must rely on large structures such as kilns, tanks and towers and silos to achieve the manufacture of portland cement, would see all of the critical items utilized in the process of manufacture treated as taxable. The economic impact of a potential increase in property tax of 50 per cent...."

That has been analysed by experts familiar with the practices and procedures of assessors in the field. On the basis of any reasonable interpretation of the proposed amendment, there would be extraordinary increases in property tax visited upon the portland cement manufacturers.

Mr. Sargent: It is not very often I go to bat for a cement company, but on page 10 you say that the economic impact would be a great hardship to you because you contribute to small communities through taxes and employment. On the other hand, you get most of your money from governments. Most of your revenue is through dealing with governments in Canada.

I have a problem, Mr. Lettner, as to dealing with a process. There is a parallel in the auto industry if you take an individual machine down the line and say, "This is exempt and this is exempt." When you are looking at something, I think the process is important.

Mr. Lettner: So do we. We feel that where the nature of the goods has been changed or is in the process of being changed and where there is a physical reaction to it, as there is in the brew kettles, where you have machinery and equipment, quite rightly, it is exempt. The kilns are exempt. We feel that where there is a strict storage, whether it be storage because of holding for some other purpose, that should be taxable.

To answer Mr. Milligan, I do not think I have ever suggested there was a

loophole, that they had found a loophole, or that I have ever accused him of finding a loophole.

There were conflicting cases. If you look at St. Lawrence Cement--the clinker storage and packing bins--all we are assessing is storage. When I used to assess an industry, I relied on the plant manager and the people in that plant to tell me what was used for manufacturing and what was used for storage. We are not proposing in any way or shape that we make manufacturing equipment taxable.

Mr. Sargent: Across the board, you tend to argue that it is taxable.

Mr. Lettner: Storage is taxable.

Mr. Sargent: You are saying why should you make an exemption there.

Mr. Sterling: Is there not a difference? The manufacturing process starts with this, this and this. Then out at the other end comes that. Is storage not when you come in with all this, this and this? That is all storage. When you come out at the other end, that is storage as well. Whatever happens in between those two ends, the start and the end, is manufacturing; is it not?

Mr. Lettner: No, not necessarily.

Mr. Sterling: For instance, in a brewery, tanks where the fermentation process has been stopped and the product stored while it is waiting to be bottled, those storage tanks should be taxed. Is that right?

Mr. Lettner: No. I do not think they ever stop until they bottle it in a brewery. I am not that familiar with breweries.

Mr. Sterling: If you stop the process anywhere in between the start and the end, you effectively have a storage problem.

Mr. Lettner: I have assessed industries where they have storage in the centre, because of the demand for a product. They can go one way or another way at that time. They store the product until they decide which way that product is going. It is straight storage. I am not talking of stopping in a brewery. In a brewery it is one continuous operation from the time it is fermented right through to the bottling.

Mr. Sterling: I was an engineer before my incarnation as a lawyer and before I was a politician.

Mr. Sargent: You are going downhill all the time.

Mr. Sterling: I was involved with a number of manufacturing processes. I do not know how you can be consistent in a policy or legislation by saying in one case, "They have stopped the process long enough here that we will nail this as storage at the second stage of their manufacturing process," or "We will stop it at the third stage," etc.

What do you do with corn in a silo? The farmer goes out, cuts his corn and then ships it down the St. Lawrence River. It sits in the Prescott silos. Then along comes Canada Starch and puts it in its plant. Do you tax the corn in the silo?

Mr. Lettner: Yes.

Mr. Sterling: Do you tax fructose and other things as they are being held, while they are waiting to go to the next stage of the process in the Canada Starch plant?

Mr. Lettner: If it is held in storage, we do. We are talking about exemptions and the act exempts machinery and equipment used for manufacturing. Our idea of manufacturing is when the nature of a product is changed. I do not think there is any argument.

Mr. Chairman: Mr. Sterling asked whether you taxed the corn in the silo and you said yes.

Mr. Lettner: Not the corn.

11:50

Mr. Chairman: I think the record will show that, though. You might want to correct that.

Mr. Lettner: Not the corn. If you reassess the silo.

Mr. Sterling: You are dealing with a different thing.

Mr. Chairman: If I can interrupt, we are going to have a lot of presentations. I think two gentlemen who are legal counsel will be appearing on other occasions, and we must leave here in about three minutes.

Mr. Milligan: If I might make one comment on Mr. Lettner's last statement, I think the conceptual difficulty here is that Mr. Lettner is of the view that something must happen within the cylinder itself that changes the item. The courts have not viewed the current technologies of manufacture in a similar fashion. They are looking at a process at a beginning point, as Mr. Sterling has indicated, and at an ending point. Mr. Sterling's view is consistent with the way the courts have viewed these cases on an individual factual basis. Mr. Lettner's view is that unless something happens in the cylinder itself, it is not in the nature of manufacturing, it is storage. That is not the issue.

Mr. Poole: If I could make two comments arising out of what has been discussed in the past 10 minutes, we come back to storage, storage, storage. We forget about buildings for a minute.

Mr. Chairman: Which is the problem, problem, problem.

Mr. Poole: The solution, solution, solution, in our view, is to say that storage tanks, bins and silos and similar types of structures are not liable to exemption. If there is an individual problem about whether a tank is a storage or a process tank, that always has to be subject to review. It may be that certain surge tanks are not storage, they definitely have surge flowing in and out. There may be others where there are byproducts halfway through the process and they are storage, and those products are sold off in one form while other parts of that process continue into another.

To meet the problem, even as described by Mr. Lettner, all we are suggesting is legislation that a silo, tank or bin or similar type of structure is used for storage. If the other words are really causing them

undue grief, and we do not think they should, you could end the legislation there. Then you would have all storage tanks.

Mr. Epp: We are talking about two different things here, if I follow this correctly. I think what Mr. Milligan and Mr. Poole are trying to do is to extend the exemption, because prior to the court cases these things were taxable.

Mr. Milligan: Only one. In fairness, they were not. The great number of these surge tanks and tanks in cylinders in the midst of industrial processes are exempt from taxation. There are 40 years of case law. I could go over them, including such cases as the Indusmin case. Indusmin had silos with partly crushed quartzite in them that were determined to be exempt back in the 1960s. That quartzite was moved down to another point in the process. There was no attempt to amend the legislation at that time.

In fact, in the light of the John Labatt case in the mid-1950s, the exemption from taxation was expanded or clarified by the government at that point, no longer to say fixed machinery used for manufacturing purposes but machinery and equipment. That was when "and equipment" was added.

I suggest that was to clarify, as a result of the Labatt case, that things such as surge tanks and silos, if you are in a dry material situation, would be considered exempt.

Mr. Epp: I want to read something into the record here that I think may be relevant to what we are discussing. It says: "The Divisional Court in Nabisco and the High Court in St. Marys Cement and Canada Cement Lafarge raised doubt about the appropriate test in determining whether a thing is a building or a structure on the one hand or machinery or equipment on the other hand. As a consequence, the extent of the exemption afforded by section 3, paragraph 17 of the Assessment Act is in doubt.

"In the Nabisco case, Mr. Justice Osborne, in finding that all the silos, including those used for storage, were exempt as machinery, said, 'If it was the desire of the Legislature to narrow the definition of either machinery or equipment for manufacturing purposes, it seems to me that the Legislature would have remedied any perceived defects.'"

That is what we are trying to do.

Mr. Chairman: I think we are conducting a mini court case here at the moment.

Mr. Sargent: As a national concern, how many plants are you talking about here?

Mr. Milligan: There are seven plants in Ontario.

Mr. Sargent: That must be a big number when you are talking about all this expensive help, talking about seven silos and seven processes.

Mr. Milligan: The tax impact is enormous in terms of those seven plants on the items that would become taxable that have never been taxed before. We are not here because of the existing litigation. The existing litigation is simply there and we felt it necessary to address it to bring to your attention that certain of the members of the association had been involved in these cases. However, if you want to review our brief, you will

see there are items that have never been considered taxable that will now become taxable and the impact on the industry is in the millions of dollars.

Mr. Chairman: Thank you, gentlemen. We must proceed to the House for a vote. We will see some of you again. Mr. Perry and Mr. Dewitt, we gave you a hard time. Thank you.

The committee adjourned at 11:57 a.m.

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STANDING COMMITTEE ON GENERAL GOVERNMENT
ASSESSMENT AMENDMENT ACT

THURSDAY, NOVEMBER 20, 1986

Afternoon Sitting



STANDING COMMITTEE ON GENERAL GOVERNMENT

CHAIRMAN: McCague, G. R. (Dufferin-Simcoe PC)
Fontaine, R., (Cochrane North L)
Grier, R. A. (Lakeshore NDP)
Guindon, L. B. (Cornwall PC)
Henderson, D. J. (Humber L)
Lane, J. G. (Algoma-Manitoulin PC)
McKessock, R. (Grey L)
Pollock, J. (Hastings-Peterborough PC)
Sargent, F. C. (Grey-Bruce L)
Sterling, N. W. (Carleton-Grenville PC)
Swart, M. L. (Welland-Thorold NDP)

Substitution:

Ashe, G. L. (Durham West PC) for Mr. Lane

Also taking part:

Allen, R. (Hamilton West NDP)
Epp, H. A. (Waterloo North L)
Foulds, J. F. (Port Arthur NDP)

Clerk: Deller, D.

Witnesses:

From the Canadian Manufacturers' Association:

Denholm, V. R., Vice-President, Ontario Division
Cartwright, M., Member; Manager, Insurance, Union Carbide Canada Ltd.
Shiller, E., Public Affairs Adviser
Gerrard, D., Member; Supervisor, Municipal Tax, Dofasco Inc.

From the Ministry of Revenue:

Lettner, W. J., Assistant Deputy Minister, Property Assessment Program
Patterson, E., Director, Tax Appeals Branch

From Ontario Day Care Organizations:

Poole, D., Chairman, Women's Perspective Advisory Committee
Ayles, T., President, Umbrella Central Day Care Services
Doran, A., Accountant

From E. B. Eddy Forest Products Ltd. and Domtar Inc.:

Poole, R., Counsel
Lebel, D., Director, Real Estate, Domtar Inc.

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday, November 20, 1986

The committee met at 3:43 p.m. in room 228.

ASSESSMENT AMENDMENT ACT
(continued)

Resuming consideration of Bill 131, An Act to amend the Assessment Act.

Mr. Chairman: The first group is from the Canadian Manufacturers' Association. Mr. Denholm is vice-president of the Ontario division. Will you please introduce the people with you, Mr. Denholm? If it happens that somebody who is a little farther away from the mike wishes to speak, please lean into it a little, particularly the person at the end, so we can record what you say. Thank you.

CANADIAN MANUFACTURERS' ASSOCIATION

Mr. Denholm: I would like to start off by introducing the members of our group who are representatives of our national taxation committee. They are on loan to the Ontario division to look at Bill 131. On my extreme right is Bill Beatty, who is manager of taxation for Dofasco, then Don Gerrard, who is supervisor of municipal tax for Dofasco, Mike Cartwright, the insurance manager for Union Carbide and Ed Shiller, who is CMA's public affairs adviser.

We would like to thank you very much for this opportunity to come before you this afternoon and explain our views on Bill 131. Before we start, I would like to give you a little background on the CMA which will tie in to part of our presentation. The CMA was formed in 1871, four years after Confederation, and is today a national bilingual organization of more than 3,000 member companies. Approximately two thirds of these companies form the Ontario division and are resident in Ontario. They vary greatly in size, 70 per cent of our member companies having fewer than 100 employees, and they represent all facets of manufacturing.

The association plays two vital roles on behalf of the manufacturing community in Ontario: It monitors domestic and international government policies to create a suitable climate for manufacturing and provides the member companies with information needed to operate effectively in today's highly competitive and rapidly changing world.

The CMA is a nonpartisan organization that strives to make a positive contribution to the legislative process at both federal and provincial levels. All the positions we take are taken by the association and are developed by national, regional or local committees made up of member company executives. We are very pleased today to have the opportunity to make our submission on Bill 131 to the standing committee.

Our submission is in two parts, separating our concerns for the amendment to section 3 and our suggestions on amendments to section 1. We have chosen to make our submission in this manner because, in reality, we are addressing two constituents: section 3 on behalf of our members and section 1 on behalf of associations such as ours.

We wish to state at this time that we have heard from the Ontario Chamber of Commerce which represents 50,000 members. They tell me they supports both parts of our submission. I believe they will be requesting time to give their own submission at a later date.

It may be more convenient for the committee, given our time constraints, if we were to present the entire submission and then answer questions on both parts. We are prepared to do it whichever way you feel is convenient. If it is all right with the committee, we want to start off by addressing the amendments to section 3 of the Assessment Act. I will ask Mike Cartwright of Union Carbide to do that.

Mr. Cartwright: Focusing on the amendments to section 3, governments have evolved an effective way of evaluating proposed legislation: stack up the benefits it will bring about against the costs that will have to paid for those benefits. If the benefits outweigh the costs, you have a good bill. If they balance out, at best you have a mediocre law. After all, why tamper with the status quo and risk unforeseen consequences for no apparent gain? If the costs far outweigh the benefits, you know you have a bad bill that will cause more harm than good. That is what you have in the proposed amendments.

Despite the government's assurances to the contrary, the amendments would add greatly to the cost of doing business, and this will erode the competitiveness of Ontario's industry and discourage new investment at the same time as the government wants desperately to attract world-class industrial plants to the province. The price we have to pay for Bill 131 could then be measured by the shrinkage of Ontario's industrial base and by the growth in unemployment.

The key section of the bill would modify paragraph 17 of section 3 by adding the following clause:

"(a) The exemption from taxation under this paragraph does not apply to a building or structure or any part of a building or structure, notwithstanding that it forms an integral part of the manufacturing or farming machinery or equipment, or of a manufacturing process or farming operation."

The effect of this change would be twofold. First, it would wipe out what is commonly called the integration test. The Assessment Act exempts machinery and equipment from property and business tax. Under the integration test, which has evolved over nearly 35 years of successive court decisions, structures such as kilns, vats, tanks, turbines and safety shields for operating equipment are also exempt.

Second, it would wipe out the exemption for machinery or equipment if that machinery or equipment were deemed by the assessor to be any kind of a structure. The courts, in accepting some claims for exemptions and in rejecting others, have been remarkably consistent in designating what is and is not machinery or equipment and what is and is not an integral part of machinery or equipment. The consistency is remarkable because of the enormous technological change that has taken place since the integration test was first formulated back in 1953.

15:50

In earlier times, lathes, punch presses, conveyor belts and furnaces were easily identifiable as part of the manufacturing process. They were relatively small in size and fitted neatly in traditional buildings. New

technology changed the shape, the size and the nature of modern machinery and equipment. The tool of today may be a great, free-standing structure, more easily mistaken for a silo than taken for the piece of manufacturing equipment it really is. Steel girders may, for example, appear to be part of the framework of a traditional building, while, in fact, they serve as supports for the giant cranes and cauldrons that are part of a modern factory.

The courts, in their wisdom, have looked beneath superficial appearance to examine the function of today's modern structures in determining whether they should be subject to property and business tax or be exempt as an integral part of machinery and equipment. That is how it should be. The intent of the Assessment Act is to tax things on the basis of how they are used, not on how they look.

Unfortunately, the architects of Bill 131 seem to have lost sight of this basic principle. They are, in effect, saying that if it looks like a silo, then it must be a silo and should be taxed as a silo. In so doing, Bill 131 would not only abolish the well-established integration test, but also obliterate that vital distinction between real property and personal property; between buildings, which are taxable, and machinery and equipment, which are not.

The effect would be the same had an earlier generation levied a tax on a jigsaw merely because it was bolted to the floor. Such an unjust tax would undoubtedly have inspired loud and massive protest. A just society simply does not tax a worker's tools. Not until now; for abolition of the integration test coupled with a clear instruction to tax any and all structures, regardless of whether they are buildings or machinery, does indeed constitute the levying of a tax on a worker's tools.

Let us suppose, for argument's sake, that Bill 131 is passed into law. How would the benefits of the bill stack up against its costs? Would it be a good law or a bad law? The Minister of Revenue (Mr. Nixon) outlined both the reason behind Bill 131 and its intended benefits in the recent debate in the Legislature. The proposed amendment to section 17, he said, resulted from a court decision to exempt from tax large silos used in the manufacture of shredded wheat.

In the words of the minister, "The Nabisco company went to court on the basis that the silos were an integral part of its manufacturing process and gained an exemption because of that." This, however, was unsatisfactory to the minister who, in effect, told the Legislature that Nabisco's silos are like silos on farms and should, therefore, be taxed.

The amendment to section 17 is, in Mr. Nixon's words, "simply an attempt to see that assessments in the municipalities where these structures are located are not needlessly reduced in these special circumstances." In other words, the intended benefit of Bill 131 will be that municipalities will not lose tax revenues.

The minister was quick to point out that Bill 131 would not increase tax revenues but merely maintain the status quo. "The amendment," he said, "is not some sort of a revenue grab." He gave assurances that it would not be used "as any kind of expansion that will put additional pressures on businesses, other than the taxes they have traditionally paid."

In essence, Mr. Nixon was saying that the benefit of Bill 131 is maintaining the status quo, while the cost would be nil. The big question, of

course, is whether the amendment will have this effect; or will it turn out to be a revenue grab that would place an additional, and perhaps unbearable, tax burden on Ontario businesses? The inescapable answer is that it would.

Logic tells you that removing existing tax exemptions would make structures taxable that have traditionally not been taxable. That clearly is an expansion of the tax base. At the same time, the government is providing no additional service to compensate for the added tax burden. Under Bill 131, Ontario businesses would incur additional costs but without receiving any compensating benefits. That would make Bill 131 a very bad law indeed.

The evidence strongly supports this conclusion. Abolition of the integration test and taxing any machinery and equipment that resembled a structure would not, as Mr. Nixon claims, maintain the status quo by ensuring that businesses continue to pay taxes they have traditionally paid. It would mean new taxes on every single business that was ever granted an exemption under the integration test and it would mean new taxes on any business whose machinery and equipment were now deemed to resemble structures.

Despite the government's stated intentions, the prospect of these additional revenues may be too appealing for many municipalities to ignore, and Bill 131 might thus trigger property reassessments across the province, with each assessor giving his or her own interpretation to the new law. Chaos and instability would reign and inequity and arbitrariness would abound. Some municipalities may end up richer in the ensuing revenue grab, but their gains would be short-lived, as the proliferation of costs would eventually drive some businesses out of the province and others out of business altogether. In the end, the growing burden of taxation will kill the goose that laid the golden egg.

The solution is to reword the proposed amendment to paragraph 17 of section 3 to read as follows--which sounds a lot like the minister said it should sound:

"(a) The exemption from taxation under this paragraph does not apply to:

"1. A building or a part of a building other than the foundation or support for machinery or equipment exempted from taxation under this paragraph; and

"2. A silo, a tank, a bin or similar type of storage structure which is not an integral part of a manufacturing process or farming operation."

Mr. Denholm: We do not believe the government meant the bill to be onerous to Ontario businesses. However, our submission points out the need to keep Ontario manufacturers competitive in world markets. This requires, among other things, a massive investment by industry, which should happen now during the recovery; yet by the end of 1987, real capital investment will only have returned to its pre-recession high in 1981. It has actually taken six years to return to this pre-recession level.

In the CMA's submission to the federal commission on tax reform, we pointed out that the corporate tax burden is already high in Canada relative to our competitors. Manufacturers incur many taxes that are not levied on individuals, for example, the manufacturers' sales tax, provincial capital taxes and municipal business taxes, which are already entrenched in the Assessment Act.

In addition, employers are required to make payments to the Unemployment Insurance Commission, Canada pension plan and workers' compensation plans. While the latter items are not strictly taxes, they are considered a legislated levy on corporations, and we recommend that the committee recognize the total corporate tax burden, both provincial and federal, while considering the plight of municipalities.

We would like to continue with part II of our submission, which is our concern about the amendments to section 1 of the bill. I will ask Ed Shiller to lead this off.

Mr. Shiller: In the recent debate in the Legislature on the proposed amendments to the Assessment Act, the Minister of Revenue said he wanted "certain specific institutions of a financial nature that are deemed to be nonprofit" to be made liable to business tax.

As examples, he cited the Ontario Jockey Club, the Toronto Stock Exchange, caisses populaires and credit unions. He added that the justification for imposing the tax "is that some of these institutions...compete on a business basis with other organizations that pay business tax."

With those words, Mr. Nixon clearly and precisely delineated the intended scope of the proposed amendment; namely, that nonprofit institutions of a financial nature that compete on a business basis with organizations that pay business tax ought themselves to pay business tax. True to those words, amendments to subsection 7 of the Assessment Act specifically mention the examples cited by the minister.

Unfortunately, the proposed amendment to section 1 of the act goes far beyond this limited scope, and in so doing, threatens to impose tremendous financial hardship and uncertainty on a wide variety of nonprofit organizations that were never intended to lose their exemption from the business tax.

The Ontario division of the CMA vigorously opposes the amendment to section 1, not necessarily because of what its architects and supporters say they want it to achieve, but because of what the wording of the amendment would, in actual practice, achieve.

Indeed, the all-encompassing wording of the amendment reduces to insignificance the question of whether the Ontario Jockey Club, the Toronto Stock Exchange, caisses populaires and credit unions should pay business tax. The real question raised by the proposed amendment is whether church societies, amateur sports groups, hobbyists, trade and professional associations and other individuals and organizations that engage in nonprofit commercial activities should be forced to pay business tax on the same footing as brokerage houses, oil companies, manufacturers and department stores.

16:00

Under the proposed amendment to section 1 of the Assessment Act, they will. For when all the rhetoric about the intentions of the bill is put aside and forgotten, we will be left with an all-inclusive law that, for the first time, defines a business for purposes of paying business tax as, in the words of the proposed amendment, "any business activity whether or not such activity produces, or is intended to produce, a profit."

Section 1, as it now stands, rightfully exempts nonprofit organizations from business tax. That exemption is both fair and just. We all pay property tax, whether we are individuals living in a home, businesses occupying office space or nonprofit associations that rent or own premises to conduct their activities.

Individuals or corporations that use their property to earn profits owe an additional debt to society. That is why they pay business tax as a surcharge on their property tax. However, that business tax is levied not merely because a certain activity is performed at the property, but also because that activity is performed for the express purpose of making a profit. That is why it is called a business tax.

Everyone understands this. Something is a business when it makes or sells a product or service to earn a profit. If it engages in those same activities for reasons other than earning a profit, then it is not a business. Up to now, the Assessment Act has recognized this vital distinction by exempting not-for-profit activities from business tax.

By amending the Assessment Act to include a broad definition of business as "any business activity whether or not such activity produces, or is intended to produce, a profit," the Legislature will change that. In the process, it will transform the business tax from a reasonable and fair assessment into an arbitrary and unfair revenue grab. How arbitrary and unfair? How about a church auxiliary group that organizes a bazaar or bingo night? Under the proposed amendment to section 1, that activity would make the group a business that is subject to business tax.

Let us take an amateur sports group that occupies an administrative office or storage space. The local softball or hockey league organizes dances and sells tickets to its games to help defray the cost of uniforms and equipment. It engages in these commercial activities, not to make a profit but to enable it to provide a service to the community. Should that make the office or storage space occupied by the softball or hockey league liable for business tax? Under the proposed changes to section 1 of the Assessment Act, the answer might very well be yes.

That might also be the case for the social club that charges admission to its amateur theatre nights or to the legion hall that sells refreshments at its periodic socials.

Then there are the trade unions and professional associations that operate on a nonprofit basis on behalf of their members. These groups are not businesses. They do not earn profits. They serve their members by providing them with information, by negotiating collective agreements or by speaking out on important public policy issues, as the CMA and some of its member companies are doing now before this committee.

Under the existing Assessment Act, unions and professional associations are exempt from business tax, as they rightfully should be. Under the proposed amendment, however, they could be subject to business tax. That is because unions and professional associations frequently engage in commercial activity, as do the church auxiliary groups, the amateur sports clubs or the legion halls. They do not do it for profit, but to defray the costs of providing services to their members. However, under the proposed amendment, that would not matter any more. Profit and nonprofit organizations would be lumped into the same category.

One of the wrongs that a well-intentioned government can inflict on the people it represents is to pass broad-ranging legislation to deal with a narrow issue. Injustices will inevitably arise when the legislation is applied in ways that were neither envisioned nor intended. There is no escaping the fact that a bad law, no matter how well intentioned it may have been, will end up causing greater inequity and greater hardship than it sets out to address.

The amendment to section 1 of the Assessment Act is bad law and should be deleted. In trying to end one perceived injustice, it would create a whole new set of injustices by denying business tax exemptions to church societies, to amateur sports groups, to hobbyists and to a host of other individuals and organizations that should rightfully have them.

Mr. Denholm: We will be very pleased to answer your questions now.

Mr. Sterling: I am going to deal with the last part of your submission first. Are you telling us that, for instance, credit unions should not be paying business tax, notwithstanding the fact that they are competing with other financial institutions in their community?

Mr. Shiller: In regard to credit unions, the answer is no, we are not saying that specifically. We are trying to enunciate certain principles of fairness and equity that should be contained in the law. Any issue that arises on whether a particular organization should or should not pay tax should be decided on the basis of those principles enshrined in law.

Mr. Sterling: I think there is an intent by the Treasurer to say that if a group is a day-to-day operation and is principally involved in a commercial activity which is in competition with the private sector, they both should be on the same footing.

For instance, the London Raceway, which is located on agricultural land, should have the same tax as Greenwood Race Track, which is located, I presume, on private land. I am not sure if that is the case under this bill.

Mr. Shiller: That issue you talk about now is specifically addressed in the bill. Later sections of the amendments to the Assessment Act do raise all the specific activities. The specific examples you give now are included in that list.

The point we are raising is, do not go so far beyond that by coming in with an omnibus definition that lumps so many areas that were never intended to be, and I do not think anybody really feels should justly be, liable to business tax. The concerns you raise, rightly or wrongly, are indeed addressed in other parts of the amendments.

Mr. Sterling: An exemption can occur in two ways. When you are dealing with business tax and with real property tax, you can be exempted under that. That automatically gives you an exemption of business tax. Does it not, Jack?

Mr. Lettner: Yes, that is right.

Mr. Sterling: If you come under the first exemption of real property tax, for instance, if you are an agricultural society, and notwithstanding that there is a full-scale commercial operation operating on your land, as is the case with the racetrack in London, you ain't paying real property tax and

you ain't paying business tax. When the commercial community is competing with those people in straight competition, particularly at this time when there is a shortage of quality horses in Ontario to race, it gives the London racetrack a foot up, if you want to call it that.

I am interested in getting rid of those inequities, as well as any other inequity. I do not care about the structure of the corporation as much as I do about the normal activity. If the principal cause of a church is to earn money by selling clothes in the basement, and it only holds one service each year for worship, then I say, "Tax it."

Mr. Shiller: But that would be dealt with by the normal adjudication of the status of that organization. We are addressing the organizations that we feel would be taxed as a result of the amendment to section 1. They would include organizations that do pay property tax but do not now pay business tax.

For example, the CMA pays property tax as part of its rent on the premises it occupies. These organizations would be relegated to that overall group that has to pay business tax, and that would really be unjust. If you want to deal with the situations you are talking about, rightly or wrongly, they are dealt with in other parts of the amendments, so there is no need to go that extra step further. It is really more than a step; it is a leap.

16:10

Mr. Sterling: Is that true, Mr. Lettner? I do not think under these amendments the London racetrack pays business tax, does it?

Mr. Shiller: Yes. It refers to--

Mr. Sterling: Now just a minute.

Mr. Lettner: There are four racetracks run by the Ontario Jockey Club: Greenwood, Milton, Fort Erie and Toronto. Not only do they not pay business tax, but they are assessed at the residential mill rate.

The other two racetracks that are operating on agricultural society grounds are in Orangeville and Barrie. They pay a grant in lieu of taxes, but that is only because the owner or the operator of the track wants to pay it. All the other racetracks operating--the one in Peterborough and the other racetracks--all pay the commercial mill rate and business tax.

Mr. Sterling: Is that the same for London?

Mr. Lettner: In London, they pay commercial mill rate and business tax.

Mr. Shiller: This is under clause (7)(1)(i). This whole section goes for several pages. It is on page 4 of this document. I do not know whether you have the same one. It says, "the business of a race track, for a sum equal to 30 per cent of the assessed value of the land so occupied or used." It is specifically there.

Mr. Sterling: Is there some amendment to section 1 that you can suggest that will maintain the integrity of what the Treasurer wants to do, but is not the wording that is currently used?

Mr. Shiller: I think the intent is contained in these later amendments I just cited; so the solution would be to delete that proposed definition. In that way, you would solve the problem without creating undue additional problems.

Mr. Denholm: If the government intends to catch particular operations, then why does it not put it down in the bill? There is precedent for it where they exempt the Boy Scouts association by name within the bill. We find that the definition of "business" is so broad that we could all be caught by it as associations.

Mr. Sterling: Why do we have a definition of "business" in there?

Ms. Patterson: First of all, on the point the gentleman raised concerning the specific reference to racetracks within the draft legislation, it is my opinion that will not catch the Ontario Jockey Club racetracks, because the whole point of the Ontario Jockey Club racetracks is that they are not in business, because you cannot be in business unless your primary and preponderant purpose, in the language of the Caisse Populaire de Hearst Limitée case, is profit-making.

Therefore, the Ontario Jockey Club is not in the business of operating a racetrack unless you can extend business to cover something other than the Caisse Populaire de Hearst case definition, get away from the preponderant purpose test and go back to a test that existed, which I am sure you gentlemen are familiar with, before the Caisse Populaire de Hearst case, which was a business activity or a commercial activity case test.

That had a lot of components to it. It talked about the intent to make a profit, but that was just one component. It also talked about the characteristics of the business activity being similar to other deliverers of goods or services in the community, the competition principle. It talked about the intent to promote the interests and financial gains of its members. For example, there are real estate associations that band together and operate a multiple listing service and pay business assessment because, although they do not make a profit from the multiple listing service, they were organized in order to produce profit for the members who subscribed.

There were similar tests of a business or commercial activity that had to do with listings in the yellow pages of the phone book, and also newspaper advertisements.

What we have attempted to do by using this definition of business or commercial activity is go back to those tests, which do not exclude profit; profit was one of the considerations. It just does not make the intent to make a profit the only purpose.

If you look at Caisse Populaire de Hearst, which is the case that started us into this, Caisse Populaire de Hearst had a very substantial amount of money on deposit. In fact, it paid dividends to its shareholders. Notwithstanding that it did make a profit and pay dividends, the court said the preponderant purpose of the organization was not to make a profit, although it did. The preponderant purpose of the organization was to service its members.

That is where I think things started to go wrong, if you will, and led to the situation that we are attempting to redress in order to go back to that old test that everybody understood.

Mr. Shiller: You have a problem. In trying to solve that problem you are saying there are some organizations that earn profits for some of their activities and the demonstration of that profit is the fact that they paid dividends to their members, shareholders or clients, whatever term you want to use.

That is entirely different from an organization that does not intend to earn a profit. The activities of that organization are not carried on to translate some form of process or the giving of information into cash or capital for the people who own that organization. There is a clear distinction among revenues, surpluses and profit. This distinction is vital to a reasonable and fair tax system.

The definition you have given in order to solve some of the specific problems you have is so broad that it encompasses these organizations that nobody wants to be taxed.

Ms. Patterson: My problem is that I do not think it does.

Mr. Shiller: We gave the examples of the local softball league or the church auxiliary group. Under the definition of "business," the activities of these organizations to raise revenues to help defray costs, not to earn profits, will make them taxable. Is that your intent?

Ms. Patterson: No.

Mr. Shiller: Then you have to change the wording.

Ms. Patterson: First, any auxiliary that is operating a bazaar or a revenue-producer of that nature is not doing it in dedicated premises, unless we are talking about something such as neighbourhood services, which has a store. If we are talking about somebody who is operating premises in a church basement under a licence of occupation or some informal arrangement, there is no real property that is distinguishable as being the premises of his commercial activity. Without real property assessment, there cannot be a basis for business assessment. Without dedicated premises, there is no basis for business assessment.

Second, if they are operating their social events within the premises of a hall, some sort of entertainment facility or restaurant, it is the operator of the hall who is engaged in a business activity and who is liable for the business assessment, not the charitable organization that rents the premises.

Mr. Shiller: The only trouble is that the world does not operate on that basis. There are organizations such as softball leagues that operate out of an office. They have premises. The Canadian Manufacturers' Association, which does not operate for profit, operates out of offices. We will be forced to pay tax. That is the reality. Perhaps that is not what is intended in your mind, but that is how people may interpret this when it becomes law.

Good law should be worded in a specific way to address the explicit concerns people have. The danger is that you will capture too much. That is really the basis of our concern.

Mr. Foulds: Maybe I can help. I find myself, as a representative of the socialist hordes, in agreement for once with the Canadian Manufacturers' Association.

Mr. Ashe: You had better review your position on this.

Mr. Epp: I do not know who is in more trouble now.

Mr. Foulds: Neither do I; that is why I thought I would throw it out.

Mr. Chairman: May I interrupt? If I read correctly, Mr. Foulds is retiring, come next election.

Mr. Foulds: No, but I am not running in the next election. That does not mean I am retiring from life. I am probably going to renew my interest in life.

Mr. Chairman: That may explain your opinion on the matter.

Mr. Foulds: No.

If you are talking about dedicated premises, what about a legion that has a dedicated premises and owns its building? What about a food co-op that is a nonprofit organization, that is not intended to make a profit or even a dividend for its members, that owns its building? What about a trade union that owns the labour centre where it participates?

You do not intend to catch them, but the Assessment Act is currently worded in a way that it could. You could get yourself into a series of cases where the municipality concerned took them to court or assessed them the business rate. There could be a court case, and the same problem you try to address would arise all over again, both in terms of court cases and not wanting to catch them, unless you do want to catch them. If you do want to catch them, the ministry should say that.

16:20

Mr. Fpp: Our intent here is not to expand what we had before the court cases. Our intent is to clarify the section. As you know, the way the legal system works, that does not preclude anyone in the future--and there are enough lawyers out there who know about this--from testing this case in the courts, the courts making a decision on it and appeals being made. That could very well happen. We are trying to put forth the definition that best describes what we want to achieve, that is, to go back to the system we had prior to the court case.

Mr. Foulds: Can you not tackle the problem another way around? It is not unusual for bills in this Legislature to have a schedule attached to them. If you have a number of cases where you think people have engaged in commercial activity for a profit or have been profitable, can you not attach a schedule to the bill designating those particular activities for liability for business tax in the future? If you run into additional cases, this bill and your budget comes up every year. There is no reason you cannot add to that, is there?

Mr. Epp: I want to add that this amendment clarifies that persons carrying on a business activity in Quebec are subject to the business tax, whether the activity is carried on for lucrative purposes. That was passed in Quebec on June 19.

Mr. Foulds: I do not understand the relevance of that.

Mr. Epp: I am saying that this same definition was incorporated in legislation in Quebec earlier this year.

Mr. Foulds: If Quebec has passed bad legislation, that is no reason for us to do it.

Mr. Epp: I am not suggesting that. I am suggesting we are in good company.

Mr. Foulds: I am not sure of that.

This is why I find myself quite in agreement with the spokesman. The legislation stands or falls on its own merit, not on what another jurisdiction has done. I would not want to impose the tax system of some of the most totalitarian regimes on our democracy.

Mr. Shiller: I might say too that the problem we are talking about in section 1 is the same type of problem there is in section 3 in many respects. You are bringing in a very broad definition or statement that will capture a lot more than was intended.

Mr. Guindon: Did the parliamentary assistant mention business tax in Quebec or assessment tax? Are we talking about business tax or assessment tax? We were reminded about that quite a few times last week.

Mr. Epp: We are talking about business tax.

Mr. Guindon: I would like your opinion on this. If we pass this Bill 131 the way it is now, I feel that the Treasurer, the ministry or other people could go on a witchhunt and pick and choose whom they want to attack or scare. I do not feel quite comfortable the way it is.

Mr. Epp: I have been on both sides of the House. I was in opposition for a number of years, longer than I care to remember, and now I am on the other side. I never in all those years felt that any ministry, including the Ministry of Revenue, for which I was a critic, was on a witchhunt at any time. I never felt that then. I do not think that now, and I can assure you that is not the case.

Mr. Guindon: When you are in business, you get an awful feeling sometimes that the government is witchhunting.

Mr. Epp: We cannot always guard against everybody thinking whatever they want. People can think what they want, but the ministry is run as fairly and equitably as it can. There is no witchhunt.

Mr. Chairman: If I may ask a question, a problem seems to have been raised by the four or five presentations we have already had. I am sure it will run true in the others we are to hear in the future. Here we have an amendment suggested by the ministry, a quite clear intent expressed by the Treasurer, but we have some learned people on the other side saying that if this is the intent, we should word it in a different way. I do not know whether all these people had a meeting some place downtown before they decided to visit us, but it is quite odd that they would all come with the same message.

At some point, it is up to this committee to decide who is right and who is wrong. It could be either one of the two.

Mr. Foulds: Maybe they all have the same solicitor.

Mr. Chairman: No. They do not all have the same solicitor.

That is the dilemma we are in. You do not seem to be arguing about the intent of the Treasurer, but you seem to be arguing about the wording in the bill. On the other side, we have a bunch of lawyers who see a better loophole in the wording they suggest to us than they do in your wording, but I think what they see is a better understood intent in the wording they suggest. I offer that as my presumption of what we are all talking about at this point, especially on the first point that was raised today, not necessarily the second one.

Mr. Shiller: In our presentation on the amendments to section 3, we offered specific wording that we feel would be much more effective.

Mr. Chairman: Yes. That is running true in the presentations we are seeing.

Mr. Shiller: But we came up with this ourselves.

Mr. Chairman: However, after we hear all your presentations, we are going to be at the point of having to make that decision, whether what you have suggested is a better wording for all and sundry than what has been suggested by the ministry. It may not have had the benefit of all your wisdom before it put it in ink, as it did. We appreciate the fact that you have come forward to tell us what you think it should be. Mr. Lettner would like to argue with me now.

Mr. Lettner: I think we have lost sight of the true test that we have put into the business, that is, that a business activity must be carried on. I do not think the legion was ever established as a business activity. I do not think that bingos, run occasionally or once a week in a church basement, are a business activity, nor do I think that trade associations or the institute that I belong to are business activities. If you are looking at the definition of business, you have first to ask, "Is it carrying on a business activity?"

Mr. Shiller: We agree. You have hit on the actual distinction. Unfortunately, the definition in section 1 defines a business as something that you and I would say is not a business. We agree. Unfortunately, the language disagrees with us.

Mr. Lettner: If we agree, we are saying business includes any business activity. That is the amendment. If we agree, then you agree that the amendment is good.

Mr. Shiller: No. What is a business activity? Selling refreshments at a legion social is not a business activity, but it could be interpreted as a business activity under this legislation.

Mr. Lettner: We agree about a business activity. We have given you the criteria, and the intent to make a profit is one of them, similar to other businesses carried on in the municipality that are paying--

Mr. Shiller: You are saying it is whether or not it is intended to run a profit. Even something that is not intended to run a profit is considered to be a business activity under this wording. That is the problem.

Mr. Lettner: It could or could not earn a profit and be a business activity, or it could not be a business activity.

Mr. Denholm: You must admit that the definition of a business activity would be left up to the assessor, not to legislation under this. We would worry about that.

Mr. Lettner: If it would be left up to the assessor, but it would also be subject to appeal and the case law that we have on what defines a business activity.

16:30

Mr. Chairman: As a farmer from north of Toronto, it is great to have the provisions for appeal in there, but if it is plain enough that you do not have to have appeals, that is what I think the ordinary MPP and the ordinary citizen are looking for. The appeal is fine, but it costs a hell of a lot of money, does it not? My comments were in reference to the first part on the buildings more than on the business side of it.

Gentlemen, are there any other points that you wish to make as a windup? I know we have not quite given you the hour yet that you were promised.

Mr. Denholm: We would be very glad to entertain any questions on the first part on the exemption in paragraph 17 on buildings and structures. We are rather keen on going to bat on this on behalf of our membership. We find it could be quite onerous.

Mr. Chairman: Are there any questions? There being no further questions, you can have a moment or two to sum up if you wish.

Mr. Denholm: We would only like to say that we appreciate the chance to come before you this afternoon to submit our presentation. We hope you will take this in context with the burden that manufacturers must bear in Ontario. Both provincially and federally, we are getting very concerned about the stacking of taxes and other nontax costs on manufacturers. We can argue that we do not pay any tax because we can pass it through to consumers. However, whether you believe that or not, it eventually catches up to you in your world competitiveness. It is our duty as the Canadian Manufacturers' Association to keep our constituents world competitive, creating employment in Ontario.

Mr. Cartwright: I have one last comment. What we are most concerned about in terms of impact on manufacturers is what is going on with the machinery and equipment. There are one or two cases that are being brought forward, and the ministry is saying: "We cannot afford to lose these cases. We want to go back to the status quo." Fine. We have no argument there, until we take a look at the words and those gentlemen start turning around and saying: "Wait a minute. At this plant, you are not just talking about a little bit. You are talking about a large manufacturing plant. It makes things. It has a lot of big machinery." Once this is said to the plant manager and he says, "If I am paying \$1, it means I am going to pay \$2 after that." In effect, in looking at some of these plants, you are talking about millions of dollars.

I came in last week to find out how these types of panels worked. I heard somebody say you are trying to get back \$2 million. We are saying that some of our member companies could lose \$2 million. They have half a dozen locations in the province.

God almighty, if we are going to continue to be a success, we are looking at exporting our product. If we turn around and take a fixed cost and you double it when it is a big number--you people know what dollars get paid in taxes at your local municipal levels and you are talking about doubling that--it will have a tremendous impact on all industry. For anybody who makes anything and has any type of machinery that is large and has intrical supports, we think the wording will have a hell of an impact.

If you are looking at maintaining the status quo, gentlemen, please be careful with the words when you protect the status quo.

Mr. Sargent: Do you buy that, Mr. Lettner?

Mr. Lettner: I buy the fact that what we are trying to do with the bill is to maintain the status quo we had before the court cases. I believe our amendment does that.

Mr. Gerrard: Do you believe, though, that the amendment could also encompass other things?

Mr. Lettner: No.

Mr. Gerrard: You do not believe it goes beyond what you are trying to accomplish?

Mr. Lettner: I do not believe so, no.

Mr. Shiller: I hope you are right because if you are right, that is fine. The only problem is that I do not think you are. With this amendment, you are wiping out 33 years of judicial decisions and tests, which will now bring people under the business tax who have not paid business tax for years, because the property that will now be taxed was, up until this amendment, considered to be an integral part of the manufacturing process, which is properly exempt.

The wording here is so broad it will bring in many other things, which is why we propose a slight change. If you read our words carefully, they will say exactly what you intend. We do not disagree on the intent. It is just the interpretation of the words to bring about that result. It is really the means you are using, and the means have to be correct if the end is going to be the end you want to achieve.

Mr. Sargent: You are saying we have been wrong for 33 years?

Mr. Shiller: No. We are saying you have been right for that time. The wording says we have been wrong for 33 years. We are saying no, with the exception of one or two problems, which by the way we worded it could be dealt with, the situation is all right. Let us not change that.

Mr. Guindon: I think they are saying do not change the rules halfway through the game.

Mr. Ashe: I do not think it is either of those situations. I think everybody is in agreement, including the ministry and the assistant deputy minister, that it is to get back to the status quo. I think where the difference comes in--and frankly this is one time when I think Jack Lettner and I are even going to part in views--is that too much reliance is being

placed in the assessor's manual, which is the guideline of the assessor. Most assessors go by the guidelines, one hopes.

I have been convinced by many that if some of these things were brought to a court--whether it be the Assessment Review Board or a court--the judge, sitting with whatever hat on, would have to go by the legislation and not by the directions in the assessor's manual. It would be a change.

We also have on the record in the second reading debate in the Legislature that the minister indicated he was not wed to the words that were here as long as we could all agree on the intent. As a matter of fact, I thought he gave a commitment that probably the ministry might come with some new words of its own by the time this committee sat.

Mr. Chairman: We sit for eight weeks in May.

Mr. Foulds: Is that a threat?

Mr. Epp: We are listening.

Mr. Shiller: I have a feeling you are. I think it is a good dialogue.

Mr. Epp: If there is some way that we can, sure. Our best advice now is that the present wording will work. We appreciate what you are saying and we will look closely at your submission.

Mr. Chairman: Thank you very much, gentlemen.

The next group we have is the Ontario Day Care Organizations. Dianne Poole is chairman of the women's perspective advisory committee.

Dianne, will you bring your people forward and introduce them to us, please?

ONTARIO DAY CARE ORGANIZATIONS

Ms. Poole: I am Dianne Poole, chairman of the women's perspective advisory committee. To my immediate right is Teresa Ayles, who is the president of Umbrella Central Day Care Services. To Teresa's right is Christine Judge, who is a supervisor at Orde Day Care Nursery, is it?

Ms. Judge: Orde Day Care.

Ms. Poole: To my far right is Andrea Doran, who is an accountant who specializes in day care.

Mr. Chairman: How is the weather now?

Ms. Doran: Horrible.

Ms. Poole: Miserable.

Ms. Doran: You do not want to go. You will love to listen to us.

Mr. Chairman: Please proceed.

Ms. Poole: We have come here today on behalf of day care. We are deeply concerned about the impact of this legislation on nonprofit day care centres. By taking away the profit motive as the test for business tax, nonprofit organizations such as day care centres will be liable for business tax. Because of the added cost, this will cripple day care activities and make them even more inaccessible to people of moderate income.

16:40

We have been told by senior ministry officials that there was never an intent to put a business tax on nonprofit day care nor, in fact, on any nonprofit organization. Apparently, there is a problem with credit unions, the Ontario Jockey Club and the Toronto Stock Exchange claiming an exemption from business tax. If that is indeed the problem, instead of attacking nonprofit groups, the Assessment Act should be amended simply to assess those three activities for business tax.

We are very concerned that, instead of doing that, an attempt is being made to remove the profit motive as the test. If it is not the intent of the bill to tax nonprofit organizations, then the bill should be amended to ensure that they are not included. However many assurances we may get from ministry personnel that day care will be protected by policy directives, we are concerned that this will not solve the problem, because in the final analysis a policy directive cannot run contrary to the Assessment Act.

We therefore strongly urge that Bill 131 be amended to reflect the true intent of the legislation. Being women, we always have a second proposal to give to you. There is always an alternative. If you do not wish to consider limiting the nonprofit organizations taxed in the bill to the three problem areas we named, i.e., the Ontario Jockey Club, the Toronto Stock Exchange and the credit unions, we do have a second proposal.

We would refer you to subsection 7(10) of the Assessment Act, which states: "No person occupying or using land as a rooming house, apartment house, farm, market garden, nursery or apiary or for the raising of animals for the production of fur is liable to business assessment in respect of such land."

I hope we are not in a minority but we consider children to be at least as important as plants, bees or animals. Could day care not be included in this section?

Thank you for the consideration in this regard. My colleagues will now address the issues concerning the hardship facing nonprofit day care centres if the legislation is allowed to stand in its present form.

Mr. Foulds: Excuse me, what was that section again?

Ms. Poole: It was subsection 7(10) of the Assessment Act.

Ms. Ayles: I am speaking on behalf of 190 nonprofit community-based child care centres. They are members of Umbrella Central Day Care Services, of which I am president. Umbrella provides administrative services to those centres.

I want to mention first that day cares in most cases fit themselves into spaces that others are not using or do not need, for example, empty

classrooms. In many cases, those schools would be closed if the day cares were not in them. One of the reasons the day cares are allowed to be in them is to the benefit of the schools to stay open.

They are also in church basements and parts of community centres that are shared with other organizations. This happens because we are dealing with young beginning families who are not very well established financially or we are serving usually female parents who cannot afford to pay very high fees for us to look after their children.

We are definitely service organizations. We are not really businesses in the sense that this bill is referring to. We receive into our centres children who are on subsidy, and the low salaries of the staff also subsidize the continued existence of most day care centres.

I do not know if you have yet received the handouts that I have for you. I have tried to bring you a handout that illustrates for you that we are not businesses in the sense this bill refers to businesses.

The first table, 7A, shows teachers' salaries. It is actually making comparisons between municipal and private centres, which I represent. The municipal centres are fully subsidized Metro centres. As you can see, we cannot afford always to hire all trained staff because of the cost of those staff members, and those people are receiving \$8,000 to \$12,000 a year in salary for a full-time job.

After training in a two-year diploma program in a community college, a person working in the community-based centres I am talking about would still receive only \$10,000 to \$20,000 a year in salary, with the average salary being \$14,000 a year. If we were to get to the point of paying fair wages for day care teachers in licensed programs in Metropolitan Toronto, the impact on parental fees would be staggering. Of course, if we were taxed in a manner that might happen as a result of this bill, the impact on parental fees would also be staggering.

Thus, in table 7B, we are talking about trying to raise our salaries and about the cost to parents if those salaries were raised to a reasonable rate compared to other people in our society. This table is cut down into the different types of children we look after--infants, toddlers, preschool and school-age children--and shows the cost of programs to date. Right now, a parent can be paying from \$1,300 to \$3,900 a year, and the teaching cost is \$8,000 a year. If the salaries were raised, a parent would be paying from \$35 to \$45.80 per day, which is a \$10-per-day increase.

On the next page, I have a bit of information about where we would like to go in day care. We explain that the public perception of the importance of child care services has shifted over the past 20 years. Many aspects of the child care delivery system still reflect a welfare orientation and an emphasis on safe custody rather than on development during the critical early childhood years. We are striving in the day care field to be considered an educational community service. We are not trying to look at ourselves as having a welfare orientation, but neither are we a business in the sense of making profit.

That pretty well makes my point. Are there any questions?

Mr. Sargent: I am totally dedicated to getting everything I can for this fantastic need we have right now. In the United States, there is a great

drive on the part of corporations to put in child care centres within their corporations. They get special tax concessions or tax write-offs as part of it. Is there anything like that in Ontario?

Ms. Ayles : I believe Metropolitan Toronto is considering this type of proposal right now. It is very much an option we would like to encourage. The fact remains, however, that a lot of nonprofit day cares are in schools, in church basements and in community centres, and they are not being forced to pay business taxes. If they are forced to pay business taxes, the rates for the parents who bring their children to those centres will rise astronomically, which will make them even more inaccessible than they are now.

Ms. Doran: You are quite right. The need for day care in Ontario is phenomenal. The last survey of which I have knowledge said that 90,000 families are looking for day care in Metro Toronto and that there are spaces for only something like 5,000 placements.

Mr. Sargent: Is it mostly church basements they work out of?

Ms. Ayles: There are very poor types of plant for these children.

Ms. Doran: The need is high. Encouraging other organizations to provide good places for day cares to operate from is an excellent idea. To date, privately owned corporations have been reluctant to provide such space because there are no incentives for them, although an organization in Thornhill has just opened a wonderful new day care and is actually subsidizing it internally as a benefit for the staff.

I believe the cost of running the day care is \$100 a day per child. The business is subsidizing the families to the tune of \$50 a day; so the families pay only \$50 as opposed to the kind of daily fees the parents are paying in Toronto. At the Hydro day care down the street, they are paying \$125 a week per child.

16:50

Mr. Sargent: Before you leave that, I have one question--

Interjection.

Mr. Sargent: This is the last shot. Are you getting any funding from the government at this point?

Ms. Doran: We get a great deal of funding. That is another anomaly I would like to bring up. It seems very peculiar to me that in the day care centres represented here, half the families are subsidized to almost 100 per cent subsidization by Metro. Out of a daily rate of \$20 a day, the families pay \$1 or \$2 a day, and Metro pays the rest. It seems peculiar that the municipality would increase its own cost by adding on a business tax and then taking it back for itself. I do not particularly like double taxation.

Mr. Lettner: It was never the intent of the legislation to assess nonprofit, community-organized, day care centres as businesses. At present, there are no nonprofit day care centres in Ontario assessed for business assessment.

In 1983, when the North York Board of Education leased spare classrooms to nonprofit day care centres, a business assessment was placed on them. Through months of talk and negotiation with the school boards and the Ministry of Municipal Affairs, the Ministry of Revenue convinced the board of education and the others that a licence of occupation, rather than a lease, would exempt the day care centres from paying business tax, because they really do not occupy a defined real space that could be assessed against them and therefore a business assessment levied against that. We have been successful in doing that. Without a defined space against which to put a realty assessment, it is impossible to put a business assessment.

That has been the case over the past three to four years. Since 1983, we have not assessed any nonprofit day care centre in Ontario for business and we do not intend to.

Ms. Doran: The unfortunate part about it is that the provision still remains in the Assessment Act. I know about that property tax problem in North York, because I was involved in it to a great extent.

We had an enormous fight to try to find out the source of this particular assessment. We found that it was through someone who worked at the North York assessment office, who became concerned that an opportunity for assessment was being missed.

Because that situation existed in the Assessment Act before and it had taken years for them to realize it existed and to put it in place, we are worried that if we leave the provision in this current bill, Bill 131, we might be subject to business tax at some point. We are worried that at some time in the future someone will realize that the opportunity exists, and we will go through the same long drawn-out situation we faced in North York a few years ago. I urge you to consider rewording that part of the provision so that we do not have to spend so much volunteer time fighting that situation.

Mr. Foulds: Do you foresee any real objection or problem--I am asking the Ministry of Revenue officials--with the proposed amendment? They have suggested that day care simply be added to subsection 7(10) of the act.

Mr. Lettner: Nonprofit day care.

Mr. Foulds: Is there any problem with that?

Mr. Lettner: No.

Mr. Foulds: Therefore, you would be happy about adding it?

Mr. Lettner: Yes.

Ms. Doran: Are you saying that the wording in the act could exempt nonprofit day care centres?

Mr. Lettner: As Ms. Poole suggested, subsection 7(10) states:

"No person occupying or using land as a rooming house, apartment house, farm, market garden, nursery or apiary or for the raising of animals for the production of fur is liable to business assessment in respect of such land."

I think the suggestion of Mr. Foulds and Ms. Poole is that no person occupying land as a rooming house, nonprofit day care centre, apartment house, etc.--

Mr. Foulds: That would solve the problem.

Mr. Lettner: It would solve it for all time then.

Mr. Foulds: Yes. Exactly.

Ms. Doran: I appreciate that. Now I am going to ask you one more thing. What about nursery schools, which are basically half-day day care centres? What about day care agencies that operate private home day care organizations in Ontario? There are about seven or eight in Toronto and several across the province. They administer private home day care facilities.

Interjection: Not all are nonprofit.

Ms. Doran: Not all are nonprofit, but the nonprofit ones are asking for it. Can we somehow include those facilities as well?

Mr. Lettner: My information is that nursery schools are at present exempt under the act.

Ms. Doran: I think you are correct, because they are now defined as educational institutions.

Mr. Lettner: That is right.

Ms. Doran: Okay. What about private home day care agencies? May I explain what they are?

Mr. Chairman: Yes. Please do.

Ms. Doran: Unfortunately, the cost of day care centres is exorbitantly high in Ontario, what with the cost of physical plant, equipment and staffing. A new total system has come into play in the past few years; that is, an agency is set up to find women who stay at home during the day to provide day care in their homes for children.

This requires supervision of the homes by inspectors, who are paid by the agencies. It requires people to go out and check references of women who are applying to do the day care and people who will interview the women applying. It requires small amounts of equipment, such as portable cribs, double strollers, the odd toy--perhaps a toy lending library--to enhance the care these women provide.

In the long run, though, it is a relatively cheaper way to provide day care than in day care centres and it provides a warm atmosphere, because these women are allowed no more than five children in their homes. They are small groups. It is especially ideal for the care of infants. Only a few agencies in Ontario provide this type of administration over private home day care, and I am asking whether you will consider exempting the agency's place of business as well.

Mr. Ashe: Can you clarify? Is the business in the context of having a business office or does it operate from someone's home as well?

Ms. Ayles: They are usually incorporated as nonprofit organizations as well. It is just not a day care centre; it is a home provider service.

Ms. Doran: The administrative part of it is done from an office. Often the office is located in a community centre. The places I am speaking about are places you may know--Cradleship Creche, Victoria Day Care Services and Family Day Care Services. These agencies are like day care centres and are licensed under the Day Nurseries Act.

Perhaps a way you might get around it is if you were to say in the act "any nonprofit day care organizations that are licensed by the province." That would also help if anybody invented a new kind of day care that would provide something better for the province, which I am all in favour of.

Mr. Foulds: I understand what you are getting at, but as a fiscally responsible person who has this problem, I also know agencies--

Mr. Ashe: What?

Mr. Foulds: I know Mr. Ashe has problems with that.

For example, agencies that operate cleaning services have sprung up during the past few years. They go under various names, such as Molly Maid, Minimaid Services or what have you, and do it for a profit. They operate out of offices. I think the trick will be making sure the definition applies to nonprofit operations.

Ms. Doran: Yes. We agree with you there.

17:00

Mr. Foulds: I gather it may be a little bit more difficult when it comes to an agency rather than a location and an operation. Am I understanding you right there?

Mr. Lettner: I have to look at it but if you are also talking about the homes, they are not assessed for business either.

Ms. Doran: No.

Mr. Lettner: In fact, it would probably be an impossible task to find out which homes are run that way.

Mr. Ashe: If they are in the community (inaudible)

Mr. Lettner: No.

Mr. Guindon: If it is more than three, it is a group home.

Mr. Ashe: One of the problems with some of these things is that you can try to imagine anything possible. You start getting into the principle of what nonprofit is.

Ms. Doran: I agree with you.

Mr. Ashe: When do you start operating that kind of business? I do not know. I am only using the extremes for illustration. I do not mean they are actual. In theory, the person operating that agency may pay himself \$5,000

a year, which I agree is nominal. They may pay themselves \$100,000 a year and the balance sheet at the end still says zero. They are not in business to make a profit. How do you determine those things? It is much harder to prove that these people are not getting market wages or higher. It is very easy in the day care--

Mr. Foulds: It is very easy in the day care.

Mr. Ashe: That is the concern. You can start getting into every conceivable situation. I know all kinds of businesses that are nonprofit. They were not designed that way but they became nonprofit for whatever reason.

Ms. Doran: Accidentally.

Mr. Ashe: You can create nonprofit very easily.

Ms. Doran: One thing about the agencies that you must keep in mind is because they are licensed by Ontario to provide home day care services and because all these agencies do qualify to provide subsidized care for children, to the municipality of Metropolitan Toronto in particular, the municipality is very careful to review the audited financial statements of all these day care agencies. It also requires that the day care agencies, as well as all the nonprofit day care centres, provide copies of T40 slips to Metro each year before their contracts with Metro are renewed.

You can be very certain that any agency that is paying--and I am sorry, I know of no one who is making anywhere near salaries like that in an agency--

Mr. Ashe: I said I used that as an extreme.

Ms. Doran: I am sure anybody who was would not be allowed to qualify for a subsidy. That would be pretty horrendous.

The reality of the situation in day care in Ontario is that most of the people are working for wages that are well below anything any of us in this room would probably consider. We are talking about average salaries around \$15,000 a year. Can you imagine trying to raise a family on that? I think there is one agency director who is earning around \$40,000 a year. All of us are down in the 30s or less. It is not very much for someone with a master's degree in social work. They are not well rewarded for the dedication they have. All the controls are in place now so there will not be any kind of cheating like that, at least in the day care sector.

I would like to point out that these financial statements we brought indicate the type of losses we have in day care, operating at deficits of \$3,000 half way through the year. We get grey hairs wondering where we will get the next dollar from. It is hard; it really is.

Mr. Ashe: I do not see any grey hairs.

Ms. Doran: Miss Clairol.

Mr. Chairman: I guess we can say that probably the ministry would consider your private home day care agencies if they fall into a clearly defined category. One thing you should drop is the private home part of your name because it does not ring very well when you put private on an act, in my estimation.

Mr. Sargent: Could you qualify that by saying "a licensed child care system"?

Mr. Chairman: In the next couple of weeks, we will be talking to the ministry. They may consent to an amendment, an inclusion or something that would accommodate you. Are there any other questions from the committee? If not, is there anything you wish to say in summation?

Ms. Poole: Just that we are appreciative of how sensitively you have approached the issue, and we wish to thank you for your consideration.

Mr. Sargent: Come back and ask for some money.

Ms. Poole: May we have that in writing before we leave?

Mr. Foulds: All these words are being recorded. The chairman will give you that in blood.

Mr. Chairman: Some of the groups that have yet to appear before us may wish to change their minds and send women to represent them.

Ms. Poole: We speak English. That made the big difference. Everybody could understand what we said.

Mr. Chairman: You are the first one to win. Mr. Epp wanted to say something.

Mr. Epp: I want to thank the group for coming before us today. With respect to the inclusion of day care centres in subsection 7(10), I understand that the Ministry of Municipal Affairs is already looking at something of that nature in a more global sense. We will look at that more closely to see what information they have for us, and we will get back to you on that.

Mr. Chairman: The next presentation is from E. B. Eddy Forest Products Ltd. and Domtar Inc. We have Mr. Lebel, director of real estate services of Domtar and Mr. Poole whom we heard from this morning.

We are a little ahead of time. Does that bother you?

Mr. Poole: No, it does not, Mr. Chairman. I should ask my wife to stay and help me out.

Mr. Chairman: Yes. You are right.

Mr. Guindon: She is better looking.

Mr. Poole: She is better at politics as well.

Mr. Chairman: She does not earn as much.

Mr. Poole: She does not have to.

Mr. Ashe: Are you saying you are overpaid?

Mr. Poole: No, what I have left over puts me in the deficit.

E. B. EDDY FOREST PRODUCTS LTD. AND DOMTAR INC.

Mr. Poole: I have with me Daniel Lebel from Domtar. We have some comments and a presentation that we filed with the committee during the lunch break. I do not want to belabour some of the matters that we touched upon this morning while in session. There is no point in repetition.

For the record, it should be clear that neither I nor my partner, Peter Milligan, who addressed the committee this morning, were involved with the presentation by the Canadian Manufacturers' Association. They came to that conclusion independent of our input. As you can tell by the tone and form of the presentation, it was not done with much assistance by any legal counsel. I think it was done by the committee as represented to this committee.

I have a comment about the Quebec legislation that Mr. Epp referred to. With respect to that legislation, the question of the nonprofit definition was legislated in Quebec and effected a broadening of the type of activity that would not be considered nonprofit. In other words, that was the approach of that legislation. Ironically, with respect to the same legislation, similar legislation dealing with machinery and equipment, which has caused so much concern in Quebec in the past six years was, in fact, not enacted because of the concerns that were raised and the problems of implementation.

17:10

I have brought before the committee a presentation prepared by Domtar and E. B. Eddy Forest Products Inc. I should advise the committee we have had discussions with the Ontario Forest Industries Association, which is currently scheduled before the committee at 11:30 on Thursday, November 27.

In the interest of avoiding duplication of effort, the association has cancelled that appointment and has or will be delivering forthwith to the committee a letter to the effect that the association is supporting the submissions put forward today by Domtar and E. B. Eddy. We have tried not to duplicate the efforts with respect to the same sector of the industrial community.

Mr. Chairman: If I can interrupt for a moment, Mr. Poole, and for others who are in the room, this committee wants to hear from all who want us to hear what they have to say. There is going to be some opportunity to do what you just mentioned, that is, endorse one or the other's brief. As I understand it, you may be before us again on behalf of other organizations before we are done.

Mr. Poole: That is correct.

Mr. Chairman: If we could work it into a couple more sessions--and we still have until tomorrow for people to indicate their intention to appear before us, but just so we do not get a whole lot of repetition, we appreciate anything you can do to amalgamate the opinions that are coming forth if you see some opportunity to do so.

Mr. Poole: That is why I am drawing to the attention of the committee our discussions with the Canadian Forest Industries Association. We were able to meet with the association and allay its concern that the representation by Domtar and E. B. Eddy should cover off its concerns. On that basis, they cancelled.

We are also trying with respect to other interested parties that have made their concerns known to limit duplication and not to tie the committee down with a verbosity of lawyers who like to do a lot of talking.

Mr. Chairman: We appreciate that.

Mr. Poole: I do not want to spend too much time dealing with the study we have put to the committee. The reason we separated these to a certain extent became apparent this morning with the Canadian Portland Cement Association. There are significant matters in litigation between the members of that association and the Ministry of Revenue, the pulp and paper industry to the contrary. It is shown on page 9 of the submission that the paper mills that are situate throughout Ontario are not in the same position as the Canadian Portland Cement Association, in that there is no dispute with the present exemption and taxability of the relevant components of paper mills.

Within this industry, there is a phenomenal use of vessels for the manufacturing process. If you take a moment to look to page 4, we have a sketch of a typical sulphite mill. I do not want to go into too much detail with it. Mr. Lebel can help me out because he knows more about the facilities than I do.

You can see from the schematic drawing that there are significant numbers of vessels used for the manufacture of pulp. There are giant metal pressure cookers, which digest the wood chips that are made by the chippers, and the barking drum, which removes the bark flowing through conveyors to huge digesters, which cook the wood chips to separate the cellulose and the fibres, which are subsequently used for the paper.

As you go through this process to the second level, you have all sorts of vessels in which the fibres and the cellulose are cleansed and bleached by chemicals, by chloride dioxide, by chloride gas, and all the vessels throughout this process are the vessels in which wood chips are converted to paper or to pulp. Under the present legislation those vessels are exempted from municipal taxation.

Somewhere in the process there may well be a storage facility or a storage tank where certain items are taken out to be sold or discarded, which, within the historical interpretation of the legislation, is a storage facility and is taxable. Under the present legislation the bulk of these facilities are considered processing vessels, tanks or cookers and are not liable for municipal taxation.

It is the view of the bulk pulp and paper industry, supported by the analyses done by Domtar and E. B. Eddy, that most of these vessels would become taxable under section 2 of Bill 131, as it is currently before this committee, because each of these huge vessels is a structure. Being a structure, it will be taxable if structures do not qualify for exemption under the act.

If you go through the intent of the submission, the calculations performed by the experts for the pulp and paper industry show that municipal taxes would increase on a typical mill by as much as 50 per cent. In some municipalities where these paper mills form the bulk of the tax base, you are talking significant millions of dollars.

A typical paper mill now pays between \$1.5 million and \$2 million in municipal tax, varying by different municipalities throughout the province.

You will be adding \$1 million to \$1.5 million in taxable assessment by taxing those vessels. Without going into too much detail, we can see that this is a volatile industry. It is dependent on international sales.

Ontario newsprint is the third largest Ontario export, and the attraction of these fixed costs on to their capital expenditures by such an increase to the municipal taxation cannot be ebbed and flowed as an income tax or as other costs that vary with the marketplace can be. One problem with municipal tax generally is that it is a fixed tax. If you make a profit, you pay the same amount of municipal tax as you do if you have a loss. When you have a capital-intensive industry, such as the pulp and paper industry, you have this huge capital expenditure for, first, machinery and equipment in your plant and, second, on an annual basis, municipal tax as a significant portion of operating cost.

The real difference of opinion is well exemplified by the sketch on page 4, because, as we read the legislation before this committee, a vessel, tank or pressure cooker is a structure. If it is a structure and if the legislation says the exemption does not apply to structures, which the legislation in its present form does say, then it automatically becomes taxable, and you do not get into the secondary question of whether that structure does certain things like a machine.

The history of the integration test and the history of dealing with these vessels, these huge pressure cookers, is that the courts admit that they are structures, that they are part of the real property, but they have a characteristic of being integral to the machinery and equipment of a facility. Things are going on--things are being cooked, things are being treated with chemicals--that give them a nature of a machine. Within the vessel itself it is the container of the liquid which is changing and being processed in the manufacturing process but it cannot be lost.

17:20

In our real concerns with the legislation and with the interpretation of the ministry, the given is that they are structures. Structures, by being structures, are part of the real property. Without the integration test, without the additional inquiry to determine whether this structure is being used to make something, it automatically becomes taxable. In the pulp and paper industry, we can see the impact on these vessels.

I have to differ very strongly with the opinion being given by the ministry that the question is that if it is a machine, it is not a structure, or if it is a structure, it is not a machine. That is not the way the cases go or the way they have gone. In Quebec, in 1980, they attempted to blend the concept of machinery and equipment to structure and they created chaos. There are municipalities where significant industrial taxpayers have had assessments reduced in court by 75 per cent, because they have come in and said, "This is a machine, not a structure, and that means it is not liable for assessment."

I will give you an example. One of the cases in Quebec involved a conveyer system. The machine of a conveyer system is the machine that runs the rubber band upon which you put the material. It could be said that the machinery is simply the belt and the machine that powers the belt. But we all know, historically, in Ontario, and in Quebec as a result of the litigation arising from its similar legislation, all the support structure of that conveyer throughout the industrial facility is treated as part of the machinery and equipment, because that is the nature of the beast.

Similarly, in Ontario, you may have a bottling machine and on top of it a vessel with the beer that is going into the bottles. All the integration test did in 1953 was to say that, functionally, that vessel is part of the machine. Even though it is a structure, it is part of the machine.

Any piece of machinery in modern technology will have a component called structure and a component called machine. If you change dramatically the history of the jurisprudence that has built up over 30 years and try to create new tests, instead of limiting the problem and stabilizing the assessment base, you will destabilize it, to the extent that parts of machines that are structures could arguably be determined structures and taxable. The assessor would then have to go inversely to every portion of a manufacturing process, every item that is part of a manufacturing process, and make that determination. In my view, that is the result of the legislation trying to simplify a problem and creating a much greater problem.

The forest products industry sits here with vessels of every nature and type you can think of, as is seen in that sketch. Yet there is no litigation pending that we are aware of with respect to exemption of various vessels utilized by the pulp and paper industry. Domtar was involved in one situation in Hamilton where it alleged that certain of its tanks were part of its process, and therefore should be exempt, although historically they had been taxed. Counsel for the ministry--the same counsel that is fighting Nabisco through the Court of Appeal--made settlement of that claim. They said: "Yes, you are right. On further investigation, these are definitely process tanks." Those were exempted. If there is any material with respect to the pulp and paper industry before this committee, it is the Domtar material. Ironically, that was settled and dealt with within the historical differentiation between process and storage facilities.

I draw to the attention of the committee that we are dealing here this afternoon for an industry that is satisfied with the status quo, that has accepted the status quo of storage versus process and is well exposed, with the nature of its liquid process by which pulp is made, to significant increase with the present legislation. It is no answer to say that a digester, although it is a huge structure, could be said to be machinery in the face of legislation that says that all structures are taxable. That is the form of the legislation today.

It is ironic that the problems with section 1 of the act in dealing with business and its definition raise the ire of nonprofit sports groups and day care centres and legion halls. The consequences of this legislation far outweigh what is trying to be done. What is trying to be done is based on four or five cases in the Supreme Court which have not yet been determined by the court. We are in a situation in which we have litigation before the courts, and there is a perceived concern that the litigation will go against the existing policy.

All of the cases, which basically are on the fringes of this real assessment differential, involve an interpretation of tanks, bins and silos, which one side says are storage and the other side says are process. That issue has been around for the past 30 years. There have been cases I was involved in when I was counsel for the Ministry of Revenue for five years in which taxpayers came in and said, "I have a bunch of tanks and you have assessed them all." I then had to analyse whether they were storage or process tanks.

Some of the cases in the past two or three years have not been resolved,

as they have been over the past 30 years, and have gone to the courts on that fundamental issue. As Mr. Lettner said this morning, if a court is saying that just because you put rat bane in a tank it becomes a process tank, of course we do not agree with that. No court has said that, in our view. Even if it had, we would agree that is not right, because that is a storage tank. If that is the concern, that some of the reasoning of some of the judges may be carrying forward into what is really a storage tank, that is why we put forward the alternative. Then there is no question about it.

To tamper with the 30 years of working through industry by industry--and the assessors have done a very good job. They have five cases pending throughout Ontario. You have an industry here which itself has more facilities than we have before the courts. They have about 35 facilities, with one single problem in Hamilton which was settled--to change all the rules, to throw out the integration test, to throw out a consideration of the manufacturing process on whether an item is machinery or equipment--I strongly urge to the committee my view that is throwing out the baby with the bath; it is using a sledgehammer to kill a fly.

The cases really come to that fringe. If the intent of the minister--and we support his intent--is to prevent that fringe from expanding or to prevent people trying to work within that fringe, then surely it is done by taking care of everything that can possibly be a building, saying that buildings cannot be exempt under any circumstances and taking care of storage facilities. In that case, you have the status quo maintained by legislation as opposed to jurisprudence, which may be perceived to be expanded.

I know I have covered a fair bit of what we were saying this morning, but looking at it from a different angle, it really comes down to the fundamental difference of opinion. I do not want to get into a legal argument, but the fact of the matter is that from all the cases in which I have been involved, and I have worked on both sides of the fence, you cannot say that a thing is a structure and, therefore, cannot be exempt without making any structure taxable, no matter what it does. That is the problem.

17:30

You cannot move to the second inquiry and say, "This structure may be machinery," if you have already said in the legislation that structures cannot be exempt. You cannot go to a digester in the pulp and paper industry and say it becomes exempt. That is the way the legislation is written.

I ask you to review the report that Domtar and Eddy have put to you, talking about some of the financial consequences, explaining the production process I have indicated--which, to date, have caused no problems about what is assessable and what is not--and indicating their conclusions. It includes as an appendix the type of equipment value that would become assessable. On page 8, we have a list of the type of equipment that would become assessable under the legislation as proposed to this committee. Virtually all the vessels we are dealing with would become assessable.

That is what I want to put to the committee. If there are any questions or comments, I will answer them.

Mr. Henderson: I want to compliment the presenters and Mr. Poole, especially, on a vigorous and articulate presentation.

Will you highlight for me specifically what you propose should be changed in this bill to make it satisfactory from your point of view?

Mr. Poole: This morning, we came forward on behalf of the Canadian Portland Cement Association and made representations to the committee. In the presentation we put forward at that time, we indicated the type of wording we believe would carry forward the intent of the legislation. This report was prepared to indicate the impact on the pulp and paper industry; it was not prepared with such a legalistic conclusion.

If you look at the submission by the Canadian Portland Cement Association this morning, at page 2 we have suggested that section 2 of Bill 131 should be amended to read: "The exemption from taxation under this paragraph does not apply to"--that is an exemption from taxation as machinery and equipment used for manufacturing processes--"a building or a part of a building, other than the foundations on which machinery or equipment exempted from taxation under this paragraph rests." In effect, this simply says buildings will be taxed.

Historically, buildings have been taxed. There has been no contest about the taxation of a building until the case of Metals and Alloys, in which a metal shredder was enclosed in a building. The taxpayer could have enclosed it with a muffler, which would be a structure taxable under Bill 131, subsection 2, but it would not, historically, have been assessed, because, in effect, it is part of the machine. Instead, he used a building. They said buildings might be exempted under some circumstances. We have suggested that if they are concerned about that, buildings should be taxable.

Mr. Henderson: In addition to the content of that, it appears to me that you are also changing the approach. Instead of talking about what is exempted, you are talking about what is taxed.

Mr. Poole: That is correct.

Mr. Henderson: That is probably going to be a little more far-reaching than it might seem on the surface, because the onus will be on the taxer to prove it is taxable, rather than the other way around. Do you follow me? I may not be putting that very well.

Mr. Poole: In any action done by the assessing authority, be it the valuation or the assessment of a property, the onus is always uniformly on the taxpayer to raise the question of the applicability of the assessment. Saying something is specifically assessable or, alternatively, something is specifically exempt, would not make a difference within the history of onus under the Assessment Act. The onus is always with the taxpayer. For example, if a case of any assessable item were to come forward, it would not matter whether you were claiming that you were exempt or that this was specifically not provided.

Mr. Henderson: Your proposal is that buildings be taxed and that is it.

Mr. Poole: No. Second, structures that are silos, tanks, bins or similar types of structures used for storage, other than as part of the manufacturing process, should also be taxed.

Mr. Henderson: Let me understand. Bins for whisky that needs to be aged as part of the manufacturing process would not be taxed.

Mr. Poole: That is correct.

Mr. Henderson: I do not know anything about it, but assuming pulp and paper, pulp mash or something had to sit there for a while as part of the process; it would not be taxed.

Mr. Poole: That is right. That is not taxed now.

Mr. Henderson: Okay. Thank you.

Mr. Poole: A fermentation tank is a perfect example of a tank that is ageing the ingredients so that beer can come out the other side.

Mr. Sargent: I move this meeting be adjourned.

Mr. Chairman: When we are done, Mr. Sargent.

Mr. Foulds: I have a couple of questions. My second job was working in a pulp mill, so I think I understand the process of the digesting and so on. Are not all these structures inside a building, if you call them structures?

Mr. Poole: A lot of them are, yes.

Mr. Foulds: Are there any on your list on page 8 that are external to the plant?

Mr. Lebel: Clarification tanks are definitely outside; effluent clarification tanks, right at the bottom.

Mr. Foulds: Are they external to the plant?

Mr. Lebel: Yes.

Mr. Foulds: Are they part of the machinery? Do you want them defined as machinery?

Mr. Poole: They are currently exempted.

Mr. Foulds: You do not want them defined as machinery.

Mr. Poole: Yes.

Mr. Foulds: You want them exempted.

Mr. Poole: Yes.

Mr. Foulds: What part of the process are they part of? Are they not settling tanks? If someone had a swimming pool in the backyard of his residence, he would have to pay tax on that. Right?

Mr. Lebel: I am not an engineer, but my understanding of a clarification tower or a tank, of problem is that basically the effluents that are unclean go to the clarification tank. The clarification tank has a piece of machinery that makes the whole mass inside spin. The effluent or the stuff that is contaminated goes to the bottom and in a lot of cases the clear water is pumped back into the water system of the city. The whole thing is really to take the clean water we get at the beginning and render it clean again.

Mr. Foulds: I understand the purpose and I think there is a very

fine purpose involved in it. I am just trying to understand the taxation problem.

Mr. Lebel: In this case, we are transforming the mass that we have at the end into something that can be reused again and taking away whatever cannot be used. It is the treatment of the byproduct, and its basic use is to clean water, plus several other things.

Mr. Foulds: You have no objection to paying property tax.

Mr. Lebel: No.

Mr. Foulds: Mines do; I understand that, coming from the northern communities, but traditionally the pulp and paper industry has not. Has the argument not been pushed to an extreme? Because all the things you are worried about being defined as structures are inside, except for the clarification tanks, your main structure, are you not worrying too much?

Mr. Poole: There are two answers to that. First, if you go back to the John Labatt case in 1953 that started this concept of differentiating vessels by use, fermentation tanks that became exempt by that legislation were all internal to the brewery and, nevertheless, determined by the court to be structures. However, they were exempt because of the processes going on within the tanks.

17:40

Second, to move to the brewery industry as an example, there are significant tanks used now in the brewing process. Because of modern technology, free-standing external tanks replace the old internal fermentation tanks that were enclosed by a building.

Whether a tank is inside or outside a building does not determine whether it is a structure for assessment purposes. From the beginning with the John Labatt fermentation case, the case law has been quite clear that you look at the item itself. If the item happens to be enclosed by a building, the building is assessable. If it is not, that does not determine whether it is assessable. There are significant storage facilities and tanks within buildings that are clearly taxable, as well as external tanks.

Ironically, it goes back to the word "structure" itself, which is such a broad word. "Structure" has been defined by the courts to be anything. The chairs we are sitting on are structures. Any circumstance in which man interferes with the course of nature, according to the Supreme Court of the United States, is a structure. A burn is a structure.

Mr. Foulds: I have a bit of difficulty because I think of residential taxation. If you have a free-standing garage, which is a structure, you pay taxes on that. If you have a swimming pool, your assessment goes up. In the pulp and paper mill, if you have a building and you have additional structures, I am not sure I understand why your liability for municipal taxation should not go up.

Mr. Poole: In exempting machinery and equipment from municipal taxation, the basic principle of paragraph 17 of section 3 is to exempt the tools of industry. You do not exempt machinery and equipment, for example, used by grocery stores, hotels or other types of taxpayers, but it seems that historically, from 1904, it has been the general policy to exempt machinery

and equipment used for manufacturing. Generally throughout Canada, this has been implemented by policy.

If the policy is to change that, that is a completely different argument. In other words, if the policy of Mr. Nixon is to say: "We do not want a machinery and equipment exemption. We want to expand liability for the pulp and paper industry," for whatever legitimate government reason, then I am certain the pulp and paper industry would be here, but we might be wearing a different hat.

Mr. Foulds: You might be making a different argument.

Mr. Poole: We might be coming forward and arguing all the problems that may arise.

The problem we are faced with is that the pulp and paper industry supports Mr. Nixon's intent. We support the proposition that the status quo should be maintained and we support the proposition that machinery and equipment used for manufacturing purposes as a matter of policy should probably not be assessed.

When you go to the example of the home owner, his garage is a building and his swimming pool is assessable because it adds value to his property. There is no exemption in section 3 for swimming pools. It may be a matter of policy that we should do that in this climate, for those who have the nerve to have an outdoor swimming pool in the middle of the winter.

Our submissions are made in the light of two things. First, there is the underlying principle that there is an economic benefit to Ontario and that the tools of the industrial trade should not be taxed. Second, the minister has come forward with legislation to prevent erosion of the municipal tax base, stating on numerous occasions that he intends to maintain the status quo and not to disrupt the stability of the assessment system. Yet we see this legislation as significantly increasing liability to a significant number of industries and sectors of the industrial base.

Mr. Foulds: To interrupt for a second, one of your worries is that because of the current position of the pulp and paper industry, an excessive addition of liability for municipal assessment might kick the balance in terms of the profitability that makes you competitive on the international market.

Mr. Poole: Exactly. There are significant problems in the pulp and paper industry. It is very much an export industry.

Mr. Foulds: Yes, I understand that.

Mr. Poole: Second, in Ontario it is saddled with significantly aged facilities, so there is a problem in maintaining Ontario's competitive position. It is time for that to be rectified by further capital expenditures.

Mr. Foulds: I thought capital expansion to modernize it took place in the mid and late 1970s, the first real wave of that since 1945.

Mr. Poole: That is right. Espanola was completed by E. B. Eddy in 1983, with significant capital expenditure. One of the problems with the municipal tax burden on this industry is the question of its high, intensive capital cost. It not only has the lack of competitive edge any taxes create but also the lack of flexibility in dealing with fixed taxes such as municipal taxes.

If I can go back to the other side for a second, if we use the proposition of machinery and equipment being exempted and accept that as being good policy, I see this legislation being very discriminatory to those types of industries that use a lot of vessels. Do you understand what I am saying? Because their processes are semi-liquid and they are carried on in all these tanks and vats, they are in a different position than assembly lines with robotics. I hope I have answered you.

Mr. Foulds: Can you tell me how much corporate income tax E. B. Eddy pays?

Mr. Poole: I do not know.

Mr. Foulds: Do you remember the last time it was paid? Do you know Domtar's corporate income tax?

Mr. Lebel: I have no idea. That is not our particular field of concern.

Mr. Ashe: It is not especially relevant.

Mr. Foulds: As the finance critic, I am concerned about the whole tax picture.

Mr. Chairman: Thank you, gentlemen. Some of you have a special interest in what we might do in the next couple of weeks. You are welcome to stay.

Mr. Ashe: For a couple of weeks. Bring in your bedrolls.

Mr. Chairman: We have agreed to sit next week and we will have a full schedule. There are still about 10 requests to make presentations to the committee. We have until the end of tomorrow for people to ask us, if they wish to appear. If no more come in, it seems to me we can find some way of dealing with the presentations in the next two weeks. We have about eight for next week and about 12 that want to come the week after. With the assistance of Mr. Poole, who seems to represent everybody on this matter, we may be able to do it in the next two weeks. We have an agreement to meet next week, but we need an agreement from the committee that we will meet on December 4.

Mr. Foulds: I will not be here on December 4. I will be in Manitoba consulting with treasury officials there.

Mr. Chairman: Did you say consulting?

Mr. Foulds: Yes.

Mr. Chairman: A consultant?

Mr. Foulds: Consulting with; learning from. I do not see why we could not have someone else here. However, meeting on Thursday mornings is very difficult when it comes to taxation matters, particularly next week, because the standing committee on finance and economic affairs meets at that time, as Mr. Ashe well knows, to deal with taxation matters. I am not sure that is a good concurrent use of committee time. Did you have someone here from our party this morning?

Mr. Chairman: Yes.

Mr. Foulds: Was that Mr. Swart?

Mr. Chairman: It was Mrs. Grier.

Is the committee agreeable to December 4? Agreed. If there is any way of working it into the next two weeks, we would appreciate the assistance of any of you who could get together on a presentation. We will try from this end to get some of the municipalities that wish to appear to do a combined presentation.

Thank you very much.

The committee adjourned at 5:50 p.m.

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STANDING COMMITTEE ON GENERAL GOVERNMENT

ASSESSMENT AMENDMENT ACT

THURSDAY, NOVEMBER 27, 1986

Morning Sitting



STANDING COMMITTEE ON GENERAL GOVERNMENT

CHAIRMAN: McCague, G. R. (Dufferin-Simcoe PC)
Fontaine, R., (Cochrane North L)
Grier, R. A. (Lakeshore NDP)
Guindon, L. B. (Cornwall PC)
Henderson, D. J. (Humber L)
Lane, J. G. (Algoma-Manitoulin PC)
McKessock, R. (Grey L)
Pollock, J. (Hastings-Peterborough PC)
Sargent, E. C. (Grey-Bruce L)
Sterling, N. W. (Carleton-Grenville PC)
Swart, M. L. (Welland-Thorold NDP)

Also taking part:

Epp, H. A., Parliamentary Assistant to the Treasurer (Waterloo North L)

Clerk: Deller, D.

Witnesses:

From the Brewers of Ontario
Poole, R., Counsel

From the Ministry of Revenue:

Lettner, W. J., Assistant Deputy Minister, Property Assessment Program
Patterson, E., Director, Tax Appeals Branch

From the Association of Canadian Distillers:

Campbell, K. M., President
Shecter, J., Vice-President, Seagrams

From the Association of Municipalities of Ontario:

Gerretsen, J. P., President; Mayor, City of Kingston
Guiler, A. C., Member, Finance Committee: Clerk-Treasurer, Town of Palmerston

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday, November 27, 1986

The committee met at 10:09 a.m. in room 228.

ASSESSMENT AMENDMENT ACT
(continued)

Resuming consideration of Bill 131, An Act to amend the Assessment Act.

The Vice-Chairman: I call this meeting to order. Our first deputant is Richard Poole. Mr. Poole, will you introduce the delegation, please?

BREWERS OF ONTARIO

Mr. Poole: To my left is John Hay, director of government relations and corporate development for Carling O'Keefe Breweries; to my immediate right is Bain Macaskill, vice-president of administration for Molson; and to his right is Phil Harrington, assistant to the vice-president and general manager of Labatt's.

The Vice-Chairman: You may proceed.

Mr. Poole: I delivered to the committee earlier in the week a submission with respect to Bill 131, which I hope the committee has in its possession. It follows along the submissions and discussions we had last Thursday. I emphasize with respect to the brewers of Ontario that no claim for exemption is currently being brought by any of the breweries in Ontario with respect to the status quo.

This submission, as is categorized in the table of contents, lays out the position of the brewers of Ontario with respect to Bill 131. I would like to highlight at page 3 of the submission the concerns with respect to the legislation as it stands before this committee.

It appears to me from the sessions we had last week that the problem as perceived in the industrial sector is the conceptualization of structures versus machinery and the position of staff of the Ministry of Revenue that if it is a structure, it is not machinery, and if it machinery, it is not a structure. What I have attempted to do in this submission is to lay out, as best I could in a way that is not too technical, the real concerns with that interpretation of what has gone on over the last 30 years.

If you will turn to appendix B at page 22, we can get to the heart of the problem. I would also ask you, in so doing, to look at the document we delivered to the committee this morning, which is simply some photographs. If you look at those photographs, the four of them on that page, under the existing legislation and under the existing policies and procedures of the Ministry of Revenue, none of the items in these pictures is currently assessed for taxation.

We have a picture of a lauter tun, which mixes the ingredients that go to the brew kettle. We have the bottling centre, which feeds the bottling machine through those vessels. We have some outside process tanks, known as

unit tanks, which are the modern equivalent of the fermentation tanks, which take a form similar to those shown in the picture of the bottling centre.

If you look for a moment at these outside process tanks, they are directly related to the manufacture of beer by unifying the fermentation process and the ageing process by which the various ingredients that constitute the final product are transformed chemically from water, malt and yeast to the product that comes out of the unit tank for pasteurization or, if it is for draft beer, for actually putting into the draft kegs.

In my view and in the view of the brewers, this gives rise to their concerns with the legislation. The only reason these outside process tanks are currently exempted is their use. They are quite clearly structures. If you look at the picture, you can see that they are structures. They are huge vessels enclosed within insulation to protect them from the elements, and they stand in an open field. Actually, this picture is of the Barrie Molson brewery, to the east of the brewing facility and connected by appropriate tubing and hoses to the rest of the facility.

With a view of the pictures in mind, if you look at appendix B, what I tried to reconcile some of the old, historical cases that gave rise to the status quo and I have taken from those cases some of the comments.

The first important comment I address to the committee from the first case, The City of London versus John Labatt Limited, is the finding explicitly made that the fermentation tanks and bottle tanks were structures. The word "structure" was sufficiently broad to cover this equipment, and therefore, "unless these...tanks are 'fixed machinery used for manufacturing purposes'...they must be held to be part of the real estate...subject to assessment."

Then he finds: "I would hold that the bottling tanks were an integral part of the bottling machines and were therefore 'fixed machinery used in the manufacture' of the finished product, bottled beer."

He moves from the concept of a structure. Having looked at the structure, he looks at the use of the structure and says that, on the basis of the use, it can be categorized within the meaning of the Assessment Act as machinery and equipment.

Similarly, in the second case, moving out of the 1950s and into the 1960s, that concept of use is brought forward in the Weyerhaeuser case, which I have cited. There again I have made my comments. Interestingly enough, at page 23 in the comments we see the position of the assessment commissioner, who admits that the use is a relevant consideration in determining whether an item or a facility is a structure or machinery and equipment within the meaning of the Assessment Act.

Indusmin takes us to 1972, where Mr. Justice Leiff makes the finding that the point he must decide is "the oft-raised question of whether a given structure is machinery integral to manufacturing or mere storage space." We are talking about whether a structure is machinery integral to manufacturing or whether it is storage space. Once again, he moves from the proposition that we have a structure into the question of whether its use recategorizes it under the Assessment Act.

I then compared the recent jurisprudence of Metals and Alloys, of which the committee has been made aware in previous discussions, and that of Nabisco Brands.

At page 24 of this appendix we see the shift by the Ministry of Revenue. The shift is simply that you do not consider the question of use to determine whether an item or a facility is machinery or equipment; you just look at it, and if it is a structure or a building, that is the end of the inquiry. This proposition, carried forward on page 25 by the Nabisco case, is the same proposition rejected by the Divisional Court.

What this all means and what this all gives rise to is that Bill 131, section 2, removes the inquiry into the proper characteristics of the item and legislates that all structures are taxable. If you look at that section, it says the exemption does not apply to buildings or structures. In so doing, it dramatically changes the existing law, the historical law, the status quo law that said you had to look at the use of an item or a facility to see whether it was exempt or taxable.

Ironically, if you go to the draft policy guidelines in the material that was furnished to the committee by the Ministry of Revenue, you have a situation where you have taken the test of use out of the statute. You look at a structure and, having looked at it, if it is a structure, that is the end of the inquiry.

10:20

However, the assessor, in his guidelines under the policy manual, then goes back to a test of use to determine whether an item is exempt or taxable. I refer you particularly to page 29 of the materials that were given to you by the Ministry of Revenue. It is not in my brief; it is in the Ministry of Revenue materials prepared on November 13, 1986. It says, "Draft Policy Guidelines for the Determination of Assessable and Nonassessable Items."

If you go down that list, you see, for example, on the left, under "Assessed," storage reservoirs; on the right you see scale pits and processing reservoirs and oil skimmers, tanks and reservoirs. If you go to the bottom, it says that storage silos and tanks are assessed but that silos and tanks, processing, blending and mixing are not assessed.

What you have in the policy guidelines that the assessor in the field will have to use to implement the will of the Legislature is a reversion to the question of use. If a silo or a tank is used for storage, it is assessed; if a silo or tank is used for processing, blending or mixing, it is not assessed.

Yet when you look at section 2 of Bill 131, it says quite clearly, "The exemption from taxation under this paragraph does not apply to a building or a structure." Thus, we have the assessor in the field looking at legislation that clearly says the exemption for machinery and equipment does not apply to a structure, and yet in his policy guidelines he is being directed, for structures called silos and tanks, to look at the process and the use. That is the problem the brewers are facing.

I am not talking about whether the integration test has gone too far in some of the recent cases. I am not talking about the Nabisco Brands situation, in which it is alleged by the ministry that tanks that are basically storage tanks have been exempted by some judge. That is an issue that has to be considered, and it has to be considered in the legislation where you cut that test.

Nevertheless, you have the fundamental principle established from 1953 forward until 1985, when these new submissions were put forward by the ministry that use is extremely important in determining this question. To go back to that, in that appendix I juxtapose the comments of the court in the Weyerhaeuser case in 1972 on the position of the assessment commissioner, which is set forth on page 23, and the submission of Mr. Chernos on page 24. They are not consistent.

Therefore, to say that this amendment maintains the status quo by removing any question of use in determining whether an item is machinery or equipment goes far beyond what has been done historically. That is the problem. We are faced with the statements on the floor of the House; we are faced with the statements at this committee; we are faced with everybody saying and agreeing in principle that the status quo is to be maintained. But we are faced with submissions by the Ministry of Revenue through its counsel that are not in accordance with and were not accepted by the Court of Appeal to be in accordance.

To carry on on page 24, Mr. Justice Arnott says during argument, "I expressed the view, which I still hold, that the question, 'What is this item used for?' is an appropriate question for the assessor." That is a case the ministry won. That case did not give rise to an exemption that was not there before; it gave rise to a taxpayer's losing a claim for the exemption of a building that had been determined by Mr. Justice Arnott clearly to be taxable. This is not one of the cases that causes the erosion; this is a case that supports the ministry's proposition but rejects the concept that the question of what an item is used for is not an appropriate question to ask for exemption.

If you go to the top of the page, it says, "Mr. Chernos submitted that the approach taken in these cases..." Prior to that, you have a list of all the cases, starting with John Labatt. Mr. Chernos goes forward to the Court of Appeal and says that what was wrong with those cases was that they looked at the question of use to determine whether an item was exempt or taxable. He says this approach is wrong, because all you have to do is to look at it, and if it is a structure, the question of use is irrelevant.

I emphasize that: "Mr. Chernos submitted that the tribunal of fact should first decide if the 'item' was a building (or structure)," and I have added "or structure" because the words are the same under the act. "If it was, the question of use, integrated or otherwise, was irrelevant." He is saying that 30 years of jurisprudence is irrelevant, that the approach taken over those years is wrong and that the question of what an item is used for becomes not part of the inquiry. That is what this legislation does; it removes the question of use from the inquiry to be made.

If you look to these outside process tanks, if you look to the brew kettles, if you look to the lauter tuns and bottling cellar and you do not look at what they are used for--if you do not look at the fact that those outside tanks are process tanks--then you cannot, in the face of Bill 131, section 2, ask that they be exempted. If it is the government's policy to expand taxability, that is one thing; but if that is not the avowed policy, as has been stated again and again, then this legislation is clearly wrong.

If you look through this submission you will see the impact this will have on the brewers of Ontario. We are looking to an impact on the brewers of roughly about \$5 million in additional municipal tax per year. They are at present paying more than \$10 million. They are up to about \$12 million now

because the data we put into the report are from 1984. You are looking at a situation in which you are increasing the taxes about 50 per cent and the analyses have been done to indicate that. It makes sense, given the nature of the manufacture of beer.

We have books here if anybody would like to know how beer is made. I think it is common knowledge. Once again, it is a liquid process. When you get a liquid process, you must have significant vessels. If you have significant vessels, then you have to look to the use of those vessels in order to determine whether they are part of a process or whether they are mere storage.

The other thing I want to draw to the committee's attention is this question of alternative wording. There was a suggestion made during the course of one of the submissions, or simply in discussions, that the suggested amended wording goes too far. From my talking with people representing all sectors of the industrial community, they are extremely concerned by this legislation. They are frightened by it.

It will have dramatic impact, particularly, for example, on a small brewery such as Labatt's brewery in Waterloo. You can swing the balance on a brewery such as that with a significant municipal tax increase. It is not an efficient brewery. It is an older, small brewery. We know for a fact, as we have outlined in this report, the smaller, older breweries are going to be proportionately more affected by this legislation than are the newer breweries.

There is real concern out there, and I want it to be perfectly clear to the committee that the concern is that legislation be put forward to maintain the status quo. It would not be at all reasonable--and even though I am a lawyer, I try to be a reasonable person--for the industrial sector to try to make a grab on the other side of the fence. It is nonsense to try to make a grab on the other side of the fence when we are very concerned with what appears to be a grab from the other side.

If you look to the amendment we are proposing and you look to page 29 of the brief that the Ministry of Revenue prepared, I fail to see a significant problem; I see a problem with one word, and that is just fine-tuning, in my view. They want to assess whether it is true that it is not a tax grab, but truly part of the exemption already under paragraph 17 of section 3 for buildings. They want to assess the enclosures of conveyors, and the word "enclosure" may require some refinement. I suggest something like "enclosure in the nature of a building" could be put into the act to cover that.

10:30

They want to assess fixed, free-standing stacks as they have always been assessed. There are smoke stacks that are integral to the building and are part of the machinery. They are part of the exemption already under paragraph 17 of section 3 for building components, things for heat and light. They want to assess storage reservoirs, which are covered off in our legislation. They want to assess buildings, which are covered off. They want to assess storage silos and storage tanks, which are covered off.

In the proposed amendment, it is put forward, as we suggest on page 12 of the brief, that "a building or part of a building," or if they want to be really refined, "an enclosure in the nature of a building" cannot be exempted. If they want to take structures which are silos, tanks, bins or similar types of structures used for storage and forget about other than part of the manufacturing process, if that word causes them problems, they pick up by that legislation everything in the policy guidelines.

If there is anything missed or if there is anything we have not seen--I think it picks up everything from the Canadian Portland Cement Association, the forest products association, the brewers and the Canadian Manufacturers' Association--but if there is something we have missed--I noticed when I reviewed these the word "enclosures"--that can be adjusted as well.

Fundamentally, the situation on the face of the legislation as it is currently before the committee is that you will give the assessor the impossible task of using guidelines. If you read the guidelines commencing at page 25 and go through them, they are directed almost exclusively to the use of an item. The assessor is to do something with that concept of use which the legislation does not authorize him to do, and that is the problem. If the legislation comes closer to those guidelines, then you can refine the application in the field of the intent of the legislation by guidelines. However, with guidelines, you cannot direct the test that is contrary to the legislation. It is that simple.

For all the argument that has been put forward for all the positions taken for all the concerns within the industrial sector, unless there is a hidden agenda, which nobody will know, the status quo is not maintained. In my view, it is not maintained because of the misinformation from staff to the Ministry of Revenue that an item cannot be a structure and machinery and equipment. Yet, the case law is clear and the directions to the assessor are clear.

What is the physical difference at page 29 between a storage silo and tank and a process silo and tank? There will be absolutely no physical difference. They look the same. If you take a look at the outside process tanks, they look like storage tanks, they act like storage tanks and yet, inside them, you have a chemical process going on. You do not have a physical process; you do not have a big paddle; you have a chemical process. They sit there, and they could be storage tanks. They could drain out all the ingredients and put finished product in those structures, and they would be storage tanks. The only reason they are not categorized as storage tanks is the process going on inside them and the fact of their use.

The Vice-Chairman: If you will forgive me, Mr. Poole, Mr. Sterling has a question.

Mr. Sterling: First, I want to thank Mr. Poole. He has drawn the issue more clearly than anyone else has with respect to the problem with subsection 2(1) of the bill.

In my questioning to you, Mr. Lettner, last week when the portland cement people were in front of us, we were talking about the clinker storage, or manufacturing silos or bins, whichever they are. The understanding I got from you about whether they were assessable was whether there was anything going on inside that storage facility or manufacturing facility, depending on which side of the argument you come through. As far as the Ministry of Revenue is concerned, you are telling me that the use test is still a very important part of determining whether a building or structure is assessable or not. Is that not correct?

Mr. Lettner: Yes.

Mr. Sterling: The use is an important test as far as you are concerned. That is what you indicated in the blue book you gave to us and, as has been pointed out by Mr. Poole, you are sending your assessors out with a

policy that basically asks them to look at what is happening in a vessel, a tank or whatever to determine whether it is assessable.

When I read subsection 2(1), I have difficulty seeing that you have the right, as a ministry, to demand that use test. The way I read subsection 2(1), if it is a building or a structure, then it is assessable in spite of the fact that it may be a very integral part of the manufacturing process. That is the way I read it. I guess that, coming from a background as a civil engineer and as a lawyer, I have difficulty seeing how a court would interpret it any other way. How do you interpret it?

Ms. Patterson: In the context of the Assessment Act, which is not necessarily an engineer's or a layman's understanding of what "structure" means, in the definition of "land" a distinction is drawn among buildings, which I presume have their normal dictionary meaning; structures, which is a very broad expression in normal English language and covers a range of things that are affixed to realty in some way; and machinery and equipment and fixtures, which are largely affixed to realty for the purpose of servicing buildings, such as heating units, air-conditioners, water heaters and those things.

I think what the court recognizes, and the distinction to be drawn between the position Mr. Poole is taking and the position we are taking, is that this word "structure"--these things that you have pictures of before you would admittedly be structures--does not extend to structures when they are machinery and equipment. Those are not groups that have any degree of overlap, or words that have any degree of overlap, in the context of the Assessment Act, which draws distinctions among those categories. Therefore, what the court goes on to say on page 22 of Mr. Poole's brief, as we see it, is that this would be a structure but for the fact that it is machinery and equipment. It falls into another category.

The way in which the court goes on in the Labatt case to determine whether it is machinery and equipment is to look at how it is used. There was a tradition of how that use test could be applied. The tradition said that if materials went into a vessel, a container or a piece of machinery and equipment and they came out different, as part of the production process, then they were machinery and equipment and they should be exempt, even though they were big, even though they were affixed to realty. If they were not affixed to realty, they would not be involved in the Assessment Act at all; there would not be a need to exempt them.

The problem we see having arisen as a result of the Nabisco case is that the courts have stopped looking at whether material goes in and product comes out of this machinery and equipment and have started looking at whether it is necessary to the production process. A lot of structures that do not change the product are necessary to the production process.

No one would operate a factory without a sheltering building to protect the equipment. Obviously, a factory is going to want to maintain stocks of raw materials in case its stock of raw materials is interrupted, so it wants a storage facility for those things. They are all necessary to the production process.

10:40

On the basis of the test of integration, they are integrated with the production process, but they are not used to produce goods. We are trying draw

the distinction between something that is affixed to realty, which would be called a structure but for the fact that it changes goods in process and is therefore machinery, and the thing--a building or passive structure--that does not change goods in process but happens to be owned by a manufacturing concern, happens to be part of the operation of the manufacturing concern and is necessary to the manufacturing concern.

Without revisiting a lot of the arguments that were made last week, that is the distinction between Mr. Poole's position and my own. Mr. Poole believes a lot of these pieces of heavy machinery are also structures, and I do not. I do not think it is necessary to interpret the Labatt case in the way he suggests, to say that all these heavy machines are structures. I think it is quite possible to say what they are saying, which is: "Yes, it would be a structure. Now look at how it is used." It is used as fixed machinery and therefore it is machinery, and that takes it out of the category of structure.

Mr. Poole: That is why I gave the committee appendix B to our submission. It is a nice argument that the ministry staff have come up with. It is identical to the argument at page 24 that Mr. Chernos came up with. At the risk of repetition, I would like to go back to page 24.

"Mr. Chernos submitted that the approach taken in these cases"--and these are all the cases we are speaking to historically from the John Labatt case forward--"and especially the 'test,' " which is a test of what it is used for, "was fallacious in that the 'integration test,' which Mr. Chernos agreed was a valid consideration in deciding whether the machinery was being used for manufacturing purposes"--

We will stop there for one second. You have to overcome two things to get the exemption. One is that it has to be machinery and equipment; the second is that it has to be used for the manufacturing process. The machinery and equipment used to heat a house or in retail business, for example, is not exempt. It is just for manufacturing.

To continue: --"had been used in determining whether the item was a 'building or structure,' on the one hand, or 'machinery' on the other."

I will stop there for a moment. The use test has historically been used to determine, within the meaning of the Assessment Act, whether an item is structure or machinery.

He submitted that that was wrong. He submitted that the tribunal must first decide, without looking at the use of an item, whether the item was a building; and I have added "or structure" because the words in the definition section, as stated by the counsel to the ministry, are "building, structure." The question of use, integrated or otherwise, is irrelevant. During the argument, I expressed the view, and I still hold to it, that what the item is used for is appropriate.

Under that act, you can reclassify an item from a structure to machinery by looking at the use. If the use is integral to the manufacturing process or if it is a process tank--to get away from those really bad words that they seem to think are so bad--then the use categorizes it as machinery. By removing the use test, you revert to looking at it and saying it is a structure. That is really what all this stuff is about.

I ask the committee to review this in detail because the argument that is being made here was the argument made to the Court of Appeal. It was

rejected by the Court of Appeal on the existing jurisprudence, and legislation is now trying to change it.

Mr. McKessock: I want to clarify what you are after. Are you looking for clarifying words added after the word "structure"?

Mr. Poole: If you look at page 12 of the submission and review Hansard and the statements that have been made, we have suggested that section 2 be substituted by the alternative wording that we are suggesting; that is, there appears to be a problem about "buildings" and about "storage facilities."

Therefore, what we suggested was that the problem could be sufficiently and properly addressed by simply mandating by the legislation that the exemption from taxation under no circumstances applies to a building and under no circumstances applies to a silo, tank, bin or similar type of structure which is used for storage.

That is really what we understand to be the problem. Nabisco is a problem because essentially, in the eyes of the ministry, you have a storage tank that because there was some ratsbane put into it has suddenly become exempt. So you find that if it is a storage tank, then it should continue to be taxable. Metals and alloys which went to the Court of Appeal raised the question of whether a building under certain circumstances was integral enough to be exempt.

Therefore, what we are saying is, address the issue that is causing the concern, and then from that legislation the ministry can set out guidelines as to what it thinks storage is and follow that through.

Mr. McKessock: I think you have answered our question that you want clarifying words to add to "structure." Can the ministry make those clarifying words?

The Vice-Chairman: Mr. Lettner, do you have a comment?

Ms. Patterson: I think I do. I am not saying it is impossible to come up with clarifying words, but the draft that has been produced by a number of Mr. Poole's clients, who have also made representations before this committee--that is, the draft which is incorporated in the brief that is before you--causes us some concerns that I think we have expressed.

Even without the discussion about whether it is used exclusively in the manufacturing process, we have concerns about the fact that it limits the minister to certain configurations. I presume Mr. Poole is aware, because I believe he represents them, that there is a refinery problem which the ministry has been successful with before the courts, where the operator of the refinery claimed that a structure, which was essentially a series of cement floors on supports, which lacked the enclosure of an ordinary building, i.e., ceilings and walls but had floors and uprights, was machinery and equipment because it was necessary for the refining process that was carried on there.

That is a configuration that does not meet the test of bins, silos and tanks. It is another configuration of "structure" and we are concerned that it would become exempt from tax. Although the courts upheld it under the current legislation, it is not under this legislation that Mr. Poole is putting before us.

The other concern that we have is that it relies on a test that talks about being part of the production process. That is pretty nebulous because our problem has been with an integration test that talks about things being necessary to production, as being part of a production process, which in our language is really not an unreasonable interpretation to put on those words. It is not the traditional interpretation, which says unless something goes on in the machinery and equipment, unless something occurs in that item, then it is not machinery and equipment, so that storage tanks might find their way back in through the use of this amendment because they are necessary to the production at Nabisco.

Nabisco needs those storage tanks. It is the front end of their production process with which nobody argues, but that was not contemplated by the ministry and historically it was not exempt.

Mr. Poole: If I could make just one comment in answer to that, when we first put forward this proposed amendment, we did have the word "exclusively," which we removed, so that it said "used for storage" and not "exclusively." Secondly, in discussions with the ministry personnel, because of their concerns about "other than as part of the manufacturing process," which we thought would add clarification, we think that could be deleted as well, so there would be no concern, it would just be the simple question.

Mr. McKessock: It appears like a lawyer's nightmare to me.

The Vice-Chairman: Thank you, Mr. Poole. I know there are more questions, but we have to thank you for your presentation. We appreciate the Brewers of Ontario being here this morning and we will be going to our next presenters.

Mr. Poole: Thank you, Mr. Chairman.

10:50

Mr. McKessock: It appears like a lawyer's nightmare to me.

The Vice-Chairman: Before we ask the Association of Canadian Distillers to come forward, I would like to say that Mr. Epp will be leaving us in a few minutes. It is not because he is not interested. It is because of something very important. He has to go back to the House and present a bill.

Mr. Epp: I have a private member's resolution before the House regarding private property. I think everybody here is interested in private property and I want to go in there and defend that. If I may, I am going to leave now. I do not think I will be back this morning, because that will take me until after 12 o'clock and I understand you want to get out of here by 11:55 a.m., so your colleagues and you can vote on this important resolution.

Thank you very much, and I am sorry I cannot be here.

The Vice-Chairman: Mr. Campbell, would you like to introduce the people who are with you this morning?

ASSOCIATION OF CANADIAN DISTILLERS

Mr. Campbell: On my far right is Gary Higgins, who is vice-president of Gilbey Canada. Next is Larry Cuddeback who is treasurer of Hiram Walker Ltd. Jay Shecter, on my left, is vice-president of Joseph E. Seagram and Sons.

The Vice-Chairman: Thank you for coming, and for the good of mankind and to record your brief for eternity, if you would get closer to the microphone, we would appreciate it.

Mr. Campbell: Our association is the national trade association of the distilling industry in Canada. Our membership comprises 12 companies with operating facilities in eight of the provinces. It is based primarily in Ontario where there are nine operating distilleries.

Our association is not disinterested in the proposed changes to the Ontario Assessment Act contained in Bill 131. We support wholeheartedly the recommendations that have been made to you by the Canadian Manufacturers' Association and the evidence that has been given to you by the brewers' association today. Their operations are very similar to ours in many ways. We have similar problems with the amendments that have been proposed, but our primary concern today is to seek your support in a further amendment to the act.

As you know, the act came in place over 80 years ago. It imposed then, as it does now, a multilevel rate tax on property used in connection with a business. No one is quite sure today what inducement existed to legislate different business tax rates for different businesses, but it has been suggested that a perception of ability to pay or the relative quality of business in the eyes of society was involved.

Since 1904, society in general has evolved, morals have changed, and so have the economic needs of all segments of society. However, the tax system in Ontario relevant to business tax has remained relatively unchanged in all that time. It has become an unacceptable tax burden to the distilling industry. What may have been an acceptable tax 80 years ago has now become a punitive and discriminating tax against distillers.

At present, industries in Ontario are subjected to the following business tax assessment rates. They are listed. There is everything from car parts at 25 per cent to general manufacturing at 60 per cent, brewers at 75 per cent and distillers at 140 per cent.

Through the 1960s and 1970s, numerous committees and commissions were mandated by the Ontario government with respect to this business taxation. All have admitted inequities existed and most made recommendations to abolish the present graded business tax. One commission specifically recommended a reduction for distillers from the present 140 per cent to 75 per cent.

In 1961, the select committee of the Ontario Legislature stated, "The committee feels that the spread in the rates applied to distillers and brewers is too wide." They recommended a 75 per cent rate for distillers.

Their recommendation was deferred, because in May 1963 the Ontario government appointed the Ontario committee on taxation, the Smith committee, and that report dealt specifically and at some length with the taxation of business properties. In reference to the rate structure, it reported, "The cardinal weakness of the Ontario business tax is the indefensible structure of its rate of assessments."

Of the written and oral submissions the committee received, Smith states, "Nothing has emerged that lends support to a graded rate structure." It recommended that "occupants of business properties...be subjected to business occupancy tax on a taxable assessment of 50 per cent." That is an across-the-board flat rate for all businesses.

The Smith report was referred to a select committee of the Legislature in 1968, and that committee reported, "The multitude of percentages currently used to determine business assessment by type of enterprise should be eliminated." It recommended to "apply a graduated business tax increment ranging from 10 per cent to 40 per cent...to be charged to all occupants of industrial and commercial properties." These recommendations were never enacted.

In 1977, the report of the commission on the reform of property taxation in Ontario concluded that a 50 per cent flat rate on market value on properties, as suggested in the government's proposal, would produce approximately the same revenue generated under the present grade rate system. The report goes on to refute the ability-to-pay criterion and also refutes the criterion of the relative quality of the business in the eyes of society, which was, as we stated earlier, apparently deemed to be the premise for which a multilevel tax was levied in 1904. The committee concluded that the "social assessment practices of the past should be rejected." It recommended the application of a 50 per cent business assessment rate.

I would like to take a moment, without imposing on your time too much, to read a part of that 1977 report, because it deals with this question of qualifications for different approaches in tax rates. The committee said:

"We have speculated as to why there now exist a variety of rates, and reason dictates that this may arise from but two possible considerations. The business tax was viewed as a tax that should somehow relate to an assumed ability to pay or, in the alternative, the tax was viewed as a penalty to be imposed because of the relative quality of the business in the eyes of society.

"It should be clear that a difference in the ability to pay, if it were to exist, cannot be accepted because the business tax, as a property-related tax, must not apply in this manner. We would observe that a concession to the contrary would be a conclusion to the contrary in almost every other aspect of our report."

In a more pragmatic sense, the fallacy of this approach is apparent in the examination of its application today. For example, a distillery attracts a business tax at the rate of 140 per cent, but a brewery would be subject to a rate of only 75 per cent. Compared to a brewery, a dairy may also attract a rate of 75 per cent. There appears to be little rhyme and no reason. Even if ability to pay was to be an acceptable criterion for this purpose, then it follows that a business with a profit has that ability, whereas the business that suffers the loss has not. This, in turn, can only be recognized by the operation of an income tax as an alternative.

We emphatically reject the notion that, apart from the federal and provincial governments, local government should now embark upon this course, i.e., income tax. We find no grounds to relate the business tax to any ability to pay. We do not accept this as a justification for a continued differentiation of business tax rates.

The only other alternative for the difference was on the relative quality in business activity itself. Such a justification would require acceptance of a properly related tax as a proper instrument for the implementation of social policy as it may exist from time to time. That cannot be a function of the property tax, which must respond to local criteria, as it is the means of financing local expenditures.

For example, while some would condemn the business activity of a distillery--and we hope no one does these days--it seems certain that those who reside in the Windsor area would hold a somewhat different perspective in the light of substantial tax revenues contributed by just such a facility and the employment and trade it generates.

11:00

It would seem that the earlier example would also be relevant. One would favour milk as one would favour motherhood, but few would equate their inherent social qualities with those of beer. We would also harken back to our framework of principles in which we postulated that a property tax should only operate in a manner that disregards the status of the owner and the location of the property. By extension and for the same reasons, we would conclude that a business tax should apply in a manner which disregards the status of an occupant and the nature of his business.

We would note here as well that a conclusion to the contrary would seriously undermine the validity of earlier recommendations, and that social assessment practices of the past should be rejected.

We therefore conclude that a single business assessment rate should apply, and this rate should be set at 50 per cent. That is the recommendation to which I referred.

The hard facts are that currently the distilling industry operations in Ontario are running below 50 per cent of the industry capacity. Employment is falling. Total sales of our products in Canada have decreased by 22 per cent since 1981. In this light, the discriminatory tax rate for distilleries has become a serious burden.

As the table of rates shows, the distillers are discriminated against even in relation to competing beverage alcohol industries, with a tax rate nearly twice that of brewers, 130 per cent compared to 75 per cent, and more than twice that of wineries, 140 per cent compared to 60 per cent.

Canada's distilling industry is concentrated in Ontario. Almost 60 per cent of the industry's production and employment is in Ontario, and 70 per cent of that production is exported. Ontario corn is the primary source of raw material for distilled spirits in Canada, and the industry is an important user of glass and packaging materials. Yet Ontario is the only province in Canada which places its inequitable tax burden on the distilling industry.

Time and again our industry has made representations to the Ontario government. Numerous government-appointed committees and commissions have studied the issue only to reach the same conclusion. The present business tax assessment system is discriminatory, and yet the inequities persist.

It is difficult to repair 80 years of unfair taxation vis-à-vis an industry, and we are not suggesting that. Further, our industry is not requesting any special favoured treatment. We are merely asking that our industry be treated as any other legitimate industry in Ontario willing to pay its fair and equitable share of taxes.

We are requesting that clause 7(1)(a) of the Assessment Act be amended to remove the discrimination against distillers by changing the rate of 140 per cent to the 60 per cent rate applicable to manufacturing; or, at the very least, if that is not digestible, to the 75 per cent rate applicable to brewers.

That is our submission. We would be happy to answer any questions to the best of our ability.

The Vice-Chairman: Thank you very much, Mr. Campbell. I appreciate your being here this morning. Mr. Pollock will start off with a question.

Mr. Pollock: I appreciate your comments because Corbyville is in my riding. I know they pay a tremendous amount of tax in Thurlow township. Do you know about that specific case? Do they have to pay taxes on their mash facilities, or do you know?

Mr. Campbell: Do you mean the 140 per cent business tax?

Mr. Pollock: I wondered about the base assessment tax on mash processing kettles, that sort of thing.

Mr. Campbell: Oh, yes.

Mr. Pollock: They do have to pay tax on that.

Mr. Campbell: Yes, as any other industry would do.

Mr. Pollock: The brewery industry does not have to.

Mr. Campbell: Are you referring to the business assessment tax rate?

Mr. Pollock: I was referring to the real estate tax rate.

Mr. Campbell: It is my understanding that the tanks, which are an integral part of the process, are exempt.

The Vice-Chairman: Excuse me, Mr. Lettner would like to comment.

Mr. Lettner: The distillers are treated exactly the same way as breweries. The items that the mash is put in are considered manufacturing machinery and exempt from taxation. I am thinking of Hiram Walker's in Windsor, where the silos on the dock were considered structures for storage of grain and were assessed. I do not know whether they still are. There is nothing assessed in the rack warehouses except the buildings. Neither the racks nor the barrels the alcohol is aged in are assessed for realty.

Mr. Pollock: I would like to comment. Here we have an operation such as Corby, in Corbyville, paying a tremendous amount of business tax and yet at one time, as recently as within a year I believe, the place was more or less pegged to be closed down when there was going to be a takeover of Hiram Walker by Gulf. It was even pegged to be shut down and yet they are paying a tremendous tax.

Mr. Campbell: If I can extend that, the situation in our industry right now is that because, for one reason or another, the sales of our industry are declining so dramatically there are going to be more plants closed. The reasons are primarily related to taxation, not just this item of taxation but also federal excise and provincial markups. This has to be of concern to the municipalities in which those plants are located. An announcement was made just this week of two closed on the Prairies, two distillers, one in Alberta and the other in Saskatchewan. No, I am sorry; one in Saskatchewan and the other in Nova Scotia. This is the effect that the heavy taxation burden this industry bears is having now.

Mr. Pollock: I am sure Thurlow township does not want to lose that tax, but on the other hand I feel they would rather have half a loaf than no bread at all.

Mr. Campbell: Right; that is what we are suggesting.

The Vice-Chairman: Before we go to Mr. Sterling, Mr. Lettner just let me know that the Treasurer and Minister of Revenue (Mr. Nixon) will be meeting with a delegation of yours on Monday, if I am correct.

Mr. Campbell: That is correct.

Mr. Sterling: I guess this question is to the ministry and to your association. Thank you for coming. I was not aware of the large discrepancies in business tax assessments, not having been favoured with a brewery, distillery or anything in my riding in eastern Ontario. We have had a Charter of Rights in place since April 17, 1985. Our provincial government is subject to the provisions of that charter. Has there been any challenge or talk of a challenge on the part of any of these groups that are paying, let us say, greater than 50 per cent, on section 7 of this piece of legislation? Is there any challenge before the courts now that you are aware of?

Mr. Lettner: Not that I am aware of.

Mr. Sterling: Perhaps counsel would like to comment on it. Is there some reason there would not be a challenge?

Ms. Patterson: That is a good question. There are probably two things. The first is that the charter is relatively new and people are still feeling their way with it. Our Charter of Rights, unlike the American Bill of Rights, does not protect property rights; it protects individual rights. The reference to protection of property was deleted from the charter in the last drafts because of concerns about property rights.

I think that area is very difficult. It brings you to look at what the American jurisdictions have done and what they call substantive due process, which comes out of their similar amendments. They have maintained differential rates for various classes of taxpayer. They have graduated rates for personal and corporate income taxes, as we do, and nobody has challenged those rates on the basis that they discriminate against the higher-income taxpayer, which in fact they do.

11:10

For whatever reason, the courts have not approached those cases. When they have, they have said that asking a taxpayer to make a contribution to the government for the things government provides to citizens is not unreasonable, that asking them to pay in accordance with their wealth is not unreasonable and that in certain circumstances asking them to pay differential rates based on what they do is not unreasonable.

Whether that is a function of saying there are certain costs to certain industries that government picks up in terms of environmental and health care, and that it is reasonable that those industries should pay part of the freight, I do not know. It is a very difficult question. I think there is one case outstanding in which the charter was raised in the argument. It has to do with multi-residential, income-producing apartment buildings and the reason they should be treated differently from single-family and condominium

residential property, because they are all housing essentially. The other issues that have to do with different rates for industrial sectors are not the subject of any litigation now.

Mr. Sterling: Perhaps they would like to respond.

Mr. Campbell: Yes, I would like to comment on it. The income tax situation has been raised, but in this business context the things that our industry is doing are exactly the same things that other businesses are doing. The income tax is based on earnings, so there is a difference that has been sorted out. We have tried to point out that the only differences that were ever raised, to our knowledge, were the question of ability to pay and the question of the quality of a business. These were studied by the 1977 commission and rejected. We are still considering making a challenge under the charter, but we would prefer to think that the logic of the situation will move the legislators of Ontario to correct it rather than our having to go through the courts to do it.

Mr. Sterling: I have difficulty seeing how a court would--you can discriminate if it is reasonable discrimination, bearing on all the factors involved. I find it difficult to differentiate your kind of operation, particularly with the breweries and wineries. I have difficulty with any other manufacturing process in terms of saying there should be differences. That does not mean everyone goes to the lowest common denominator. Perhaps there has to be a saw-off somewhere in between. The unfortunate part is that this section is not under--it is opened up in this act but the issue is not really addressed.

Mr. Campbell: That is correct.

Mr. Sterling: I appreciate your coming before the committee and letting us know about this problem. The government should make some move to address this situation along with the situation Mr. Pollock identified; that is, Corby Distilleries is in a fairly small rural municipality that has learned to depend on 140 per cent business tax. If the tax is to diminish, perhaps there has to be some adjustment or assistance for a period of time to a small municipality that depends on that kind of money.

Mr. Pollock: Along those lines--

The Vice-Chairman: One moment, Mr. Pollock. Mr. Swart has a question.

Mr. Pollock: It is along the same lines Mr. Sterling was talking about.

The Vice-Chairman: I will get back to you in a minute.

Mr. Swart: I have two questions and they follow up on what has already been asked.

First, you obviously heard the presentation that was made by the brewers relative to what seems to be the definition of structures, machinery, etc. Do you agree with their presentation? Would you like to endorse it in that regard?

Mr. Campbell: Yes, we endorse it. We are in a similar situation.

Mr. Swart: It seems to me it is only an interpretation.

The second is more a comment than a question, although I have a question of Mr. Lettner and the staff. I have been involved in one way or another with all the studies that have been done over the past 25 years, either as a critic for the New Democratic Party since I have been here at Queen's Park, or prior to that, on the executive of the Association of Municipalities of Ontario or the Association of Mayors and Reeves.

I have not yet seen an argument why the distillers should have the 140 per cent business tax, apart from tradition, apart from the fact this has always been applied and the municipalities are going to lose this money and it can hurt the municipalities. There is no apparent logic in the 75 per cent for breweries and 140 per cent for distillers. I would like to ask Mr. Lettner or staff whether there is any philosophical or real argument, apart from the loss of revenue, for not putting breweries and distillers on the same basis, probably at 75 per cent.

Mr. Lettner: You understand that the business assessment section of the act was written in 1904 and there has been hardly any change since then.

Mr. Swart: I understand that.

Mr. Lettner: In 1904, distillers were assessed for 150 per cent and were reduced to 140 per cent in 1968-69 when the act was rewritten. There is no other reason, to my knowledge, except that the municipalities would lose considerable money.

Mr. Swart: Yes, that is my understanding. I will make this comment: I know all the changes have been proposed time after time and that when you make a change in the assessment of one category, then others in the other categories think theirs should be changed. However, this is such a blatant injustice I think this committee should take the bull by the horns when we are dealing with it clause by clause and reduce it to the same as that of the breweries.

Mr. Sterling: Mr. Lettner, will you ask the Treasurer whether he will consider an amendment by this committee to reduce it to something like 75 per cent and what kind of time frame would be required? If Mr. Swart is willing to put it forward, I am willing to indicate our people will look at it, although I will have to refer to Mr. Pollock and some of the other people. If you will ask him about this and report back to the committee some time in the future, I would appreciate it.

Mr. Lettner: Yes. As I stated, I will be meeting with Mr. Campbell on Monday afternoon at 3:30. Mr Nixon has asked me for a report on it.

Mr. Sterling: Rather than having to go through another bill and all the legislative process, we can do it here, as long as there is some kind of agreement to do so.

Mr. Pollock: Mr. Campbell, I know you would not have a breakdown on the extra taxes Corbyville alone is paying into Thurlow township, but you must have a breakdown of what it is costing the breweries right across the province, between that 75 per cent and the 140 per cent, because you are asking for the reduction.

Mr. Shecter: Yes, we have those numbers as prepared by the ministry. In Thurlow township, the saving is \$108,000 to Corby Distilleries for getting that change in the assessment rate. Corby is currently paying \$400,000. That

would be reduced by \$108,000. To all distillers in Ontario, the savings from a reduction in rate from 140 per cent to 75 per cent would be \$3.8 million. They are currently paying \$14.1 million. It is an overall reduction of about 25 per cent.

The Vice-Chairman: Mr. Campbell, do you have any further comment?

Mr. Campbell: No, Mr. Chairman. Thank you for a good hearing. We are encouraged by the comments we have heard. We are available to the committee for any further information or analysis we can provide.

11:20

The Vice-Chairman: We appreciate your brief. Do any other members of your panel wish to comment? No? Thank you, then. It is very much appreciated.

Mr. Sargent: Are we on record as to what Mr. Sterling was saying along with Mr. Swart on a motion? Is it on record for us to do that or what?

The Vice-Chairman: I do not have a motion, Mr. Sargent, and cannot--

Mr. Swart: I presume the normal policy will be followed and after you hear the representations from all the groups, you will move to clause-by-clause and move any amendments at that time. Is that not right? We would not deal with that at this time.

Mr. Sterling: I think, Mr. Sargent, what I asked Mr. Lettner was to speak to the Treasurer about how this would be done and whether there would be some great objection we have not heard here to that kind of analysis. Perhaps something more palatable to the municipalities that would suffer the tax loss would be a decrease of 20 per cent for five years, or whatever number of years, to reach that level so smaller municipalities would not feel it was sudden.

Mr. Sargent: Prior to going to the Treasurer, why would we not consolidate it by making a motion now and getting it out of the way?

Mr. Sterling: Normally we deal with amendments to the bill after we have heard all the public presentations and debate.

Mr. Swart: Somebody might make representations on the other side. We want to hear them all before we move amendments. That is the way it is normally done.

The Vice-Chairman: At this time I will call the Association of Municipalities of Ontario. It is brief 2/6/2A. It was in your folders last week. If you look through them, you will find it.

ASSOCIATION OF MUNICIPALITIES OF ONTARIO

Mayor Gerretsen: Good morning. My name is John Gerretsen. I am the president of the Association of Municipalities of Ontario and mayor of Kingston. With me today is Albert Guiler, one of the co-chairmen of our fiscal policy committee and Colin Goodfellow, a policy analyst for the association.

The Vice-Chairman: Welcome to the committee and please proceed with your brief.

Mayor Gerretsen: There are basically two issues that we want to address with the committee today. One deals with the definition of "business" contained in section 1 of the bill. We support the definition that is contained therein.

We support it because it will recapture assessment lost to Ontario municipalities since 1983, as well as stem the flow of organizations becoming business tax-exempt. This revised definition of "business," coupled with the specific inclusion of credit unions, caisses populaires and racetracks in subsection 7(1) of the Assessment Act, is a corrective measure in our opinion to re-establish the legislative intent of the Assessment Act prior to the Supreme Court of Canada ruling in 1983.

We have repeatedly pressed upon the provincial government the principle that all properties should be liable for the full share of taxes and that all going concerns should pay their full share of the levy on business assessment.

Legal subtleties notwithstanding, AMO believes that it was never the purpose of the Assessment Act to exclude credit unions for \$700,000 of business tax liability for the 1983-84 year. The association does not believe that the Ontario Jockey Club warrants treatment that is analogous to charities by being exempted an estimated \$4.5 million in business taxes since 1984 as a consequence of the preponderant purpose test.

AMO most recently expressed to the provincial government its concerns over the business assessment exemption being enjoyed by credit unions and the Ontario Jockey Club, etc. In our opinion, Bill 131's restoration of the Assessment Act's original intent, by providing a clear definition of "business," should slow the flow of organizations gaining exempt status. AMO is pleased that the province has moved to support the municipal interest in this regard.

That deals with the definition of "business." If there are any questions on that, we would be more than prepared to deal with that at this time.

Mr. Swart: I just have a question on the figure. I am not really doubting it, although I was surprised the figure was not higher than \$700,000 for the numerous credit unions and caisses populaires we have across this province. We are in fact talking about a figure of \$700,000 only on--

The Vice-Chairman: Excuse me, perhaps Mr. Lettner could explain that.

Mr. Lettner: Those are our figures, I believe. When we assessed credit unions for business, we restricted them. Many credit unions are operated from church basements or on a part-time basis; they were never assessed for business, because they had not an area defined that they conducted business from; they were a one-night-a-week or one-night-a-month operation.

Also, when we were assessing credit unions for business, we did not assess the very restricted ones, such as those restricted to members of a parish or the like. We had credit unions broken down that way, and that is why the total we lost at the time when we took credit unions off was \$700,000.

Mr. Swart: But the majority of credit unions with their own business and structure now do in fact pay business tax. Is that what you are saying?

Mr. Lettner: They have not paid business tax since 1983, but the

amendment to the Assessment Act, if it went through, would make them pay business tax where they have their own structure or business hours and run it as a business.

The Vice-Chairman: Albert, is there anything you want to add to that?

Mr. Guiler: No. I think Mr. Lettner has pretty well covered it.

The Vice-Chairman: In the past few weeks, we have had many presentations on and explanations of the word "business." We have heard quite a bit about it. Would you like to expand more on it?

Mayor Gerretsen: I guess our main concern, as outlined in the brief, is the fact that as municipal governments in this province, we believe all property should be liable for its full share of taxes. If certain grants are to be given to different organizations for whatever reason, leave it up to the individual municipalities.

We feel that over the past number of years, as a result of court cases, administrative decisions, etc., there has been a widening of the kinds of businesses that are exempt. It is obviously hurting our tax base. That is the main thrust of our whole presentation. With that in mind, we support the definition of "business" contained in the new bill.

Mr. Sargent: Do you feel the province should keep its nose out of your business?

Mayor Gerretsen: We have been saying that for years.

Mr. Sargent: I agree. You have a tough enough job running your own show without them pushing you around.

Mr. Sterling: Maybe I should ask the mayor if he would like to patrol the bay in Kingston as well in terms of police forces and everything else. How would you like to keep your nose out of provincial business?

Mayor Gerretsen: Sometimes the discretion is the better part of valour; so I would rather not comment on that.

Mr. Sterling: Perhaps it might be, since we had the breweries in earlier this morning and the distilleries just now.

The question I have for Mr. Lettner is one that I asked the Treasurer in the Legislature but did not get an answer to. If municipalities want to forgive a business tax, do they have it within their power to do so by passing a bylaw or a resolution of council?

Mr. Lettner: I do not believe so. They can give grants to residential properties under the Municipal Act, but subject to someone who knows more about taxation than I do, I do not believe they have the power to forgive a tax, unless they write it off as uncollectable.

Mr. Sterling: In terms of the property tax, I do not believe they have the right to forgive that either. I do not believe they have the right to make that decision either. Is that correct?

Mr. Lettner: Section 496 of the Municipal Act outlines what a municipality can write taxes off for--uncollectable, poverty and the other

things. Then under section 112, I believe, the municipality can make grants to residential property but not to commercial or industrial property.

11:30

Mr. Sterling: I asked the question because I went through it with a combined nonprofit nursing home and home for the aged that was a community-based effort. The municipality wanted to forgive them realty taxes and any kind of business taxes. When you forgive taxes, you are dealing with two or three elements. In Ottawa-Carleton, you are dealing with regional, municipal and school board taxes. I am not sure that the decision should be yours and yours alone. What is the position of the AMO?

Mayor Gerretsen: I do not think we are talking in terms of forgiveness of taxes. Most municipalities get requests for numerous grants to organizations for charitable purposes, etc. We can envision a case where, if they are involved in some sort of charitable work that in effect--we do it now with the YMCA. I know that is a totally different situation but our approach with them is, "You will pay your taxes, but we may give you a grant for certain of the programs you run." It is in this light that we are talking about leaving it in the municipality's own lap, not to forgive taxes but to give grants if it feels there is a need in a particular situation.

Mr. Sterling: Where it became important in this case was that in putting up a substantial structure, the mortgagee required more comfort than was the current council's feeling that year about forgiving municipal taxes. That was the problem faced by Osgoode, which is located in Ottawa-Carleton. I had to bring forward a private bill and an exception was made for that case. I wonder whether the AMO has ever considered the issue or has any position on it.

Mayor Gerretsen: I suppose organizations change and whatever kind of work they are involved in with the community changes. It is probably better left to each individual council to decide in any given year what kind of forgiveness it wants to apply. I would not be in favour of a situation where you would do it on a mortgage basis, which, I suppose, would be for a minimum of five years.

The other aspect deals with the proposed exemption for amusement rides. This is something we do not support. We recognize that the government is attempting to establish consistency between the tax liability of amusement machinery and the other assessment-exempt and taxation-exempt machinery cited in paragraph 3(17) of the Assessment Act. However, the distinction between machinery "used for manufacturing or farming purposes" and mechanical amusement machinery is that amusement machinery is employed at the retail level to supply the service of amusement as opposed to the production of a commodity, as is the case with other tax-exempt machinery.

The association believes that the province's "machinery is machinery" approach to assessment and taxation is inadequate and harmful to the interest of Ontario communities. Further, AMO is concerned that the province is simultaneously moving to close one set of exemptions by including a definition of business while opening a new category for business concerns to seek other exemptions.

The possibility of ski-lift operations, towers equipped with observation decks, towers in which the elevator has been converted to an amusement ride and certain existing and proposed shopping centres being found as reasonably

part of this new category of exemptions suggests that this portion of Bill 131 should be abandoned, as far as we are concerned.

We realize that with the new definition of business, you are including certain categories of activity in a community, and yet here the possibility of widening the number of exemptions, particularly with the new runs and the new amusement parks and so on that are coming on stream all the time, is broadening. We do not feel that is very consistent.

Mr. Sterling: I am concerned about that exemption as well in terms of being even in dealing with the tourism industry. If we are trying to support our tourism industry, the proposal should be evenhanded in dealing with amusement parks or any other kind of tourist attraction facility. That is where I have some difficulty with this amendment. Is Old Fort Henry in your municipality?

Mayor Gerretsen: No, it is in Pittsburgh township.

Mr. Sterling: Do they pay grant in lieu?

Mayor Gerretsen: As far as I know they do.

Mr. Swart: I am a little confused about the interpretation under section 2 with regard to the new clause. I was not here when the whole matter was discussed last week. It seems to me we had this discussion this morning when the brewers presented their case. The ministry's interpretation was that it would not be considered a building or structure if it was used as part of a manufacturing process.

I understood, and perhaps wrongly so, that it was a question of wording, that there was no intent to bring back in for assessment purposes tanks, etc., that are used for the manufacturing process. Am I right or wrong in the interpretation? It appears to me your understanding is that all the buildings or structures, whether or not they are used for manufacturing, are going to be assessed under this new proposal.

I did not understand your interpretation, Ms. Patterson. Is it that they would be excluded because they would not be considered a building or structure if they are being used for the manufacturing process? Am I wrong? Does it mean we are going to bring back anything that is considered a building or structure? For example, for the tanks that were shown by the brewers here, would it not matter whether they are part of the fermentation process so that if they are sitting outside or even if they are not sitting outside, they are considered a building or structure and will be taxed. Which way is it?

Mr. Lettner: The breweries' fermentation tanks that Mr. Poole showed that were sitting outside are exempt and they would be exempt after the amendment went through. The mayor is speaking about amusement rides.

Mr. Swart: I am sorry; I am dealing with the previous section.

Mr. Lettner: We say that it is to keep the status quo, to keep what we had before we started losing in the courts. If they are part of a manufacturing process and used for storage they would be taxable. If the nature of the goods within an item is changed, if a vessel is used to ferment, for example, then it would still remain exempt.

Mr. Swart: I think there is a misunderstanding on your part. To me,

it is perfectly obvious from the wording of this. It says, "The exemption from taxation under this paragraph does not apply to a building or structure or any part of a building or structure, notwithstanding that it forms an integral part of manufacturing or farming machinery or equipment, or of a manufacturing process or farming operation." You are telling us that will not be considered a building or structure if it is used as an integral part of the manufacturing process. Is that correct?

11:40

Ms. Patterson: I think the problem, and what the distinction is going to come down to, is that integration is different than use. Something can be used--in the language we were speaking in this morning, that vessel, that item, that piece of machinery changes the product within it, if you will. It can be integrated and, the way the cases have run, that means it is necessary to the production. A storage silo can be integrated, a building can be integrated, a structure can be integrated because they are necessary. No one would try to carry on that business without that item. It is part of the process, but it does not actually change the goods in process and, on a use test, it is not machinery and equipment.

Mr. Swart: I understand that interpretation, but that interpretation is at variance with the interpretation put on it by Mayor Gerretsen. I suggest that this wording is going to cause a real problem before the courts and in the interpretation by the Ministry of Revenue. It is going to cause more confusion than there was before. You may be trying to close a loophole, and I do not object to that; but that interpretation of whether it forms part of the process is really going to cause problems. It has to be reworded.

Perhaps I can ask Mayor Gerretsen whether I have interpreted his interpretation correctly. Did you think this section meant that all vessels or all structures, whether or not they are an integral part of the process, would be assessable?

Mayor Gerretsen: Yes, that is correct.

Mr. Swart: There is a variation in interpretation here. That has to be cleared up or it will cause all kinds of problems.

Mr. Sterling: Mr. Swart points to the very key problem of subsection 2(1) as it is written and its interpretation. Essentially, AMO has buttressed what Mr. Poole said earlier this morning from the opposite side. He said that, in reading that section, you get the impression--and I get the impression from the section--that if a structure, which would be a large tank attached to the ground or whatever, had inside it something that was stirring or fermenting or something that was changing in some way that was involved with the manufacturing process, then under this legislation it would be assessable, in your estimation.

Mayor Gerretsen: Right.

Mr. Sterling: They are saying it is not. I just showed you page 29 of the book they provided to us, saying they were going to send their assessors out. Mr. Poole said we should get straight the direction in which this government is going on this issue so that everybody understands each other and so that you are not going to fight with the assessors and say, "That should be assessable and you are not assessing."

That is the problem Mr. Swart wants to correct. Your brief points it out on page 3, where you say, "AMO congratulates the province in striving to treat all buildings and structures used for storage or in the production process in a like manner for assessment purposes." You and they have--

Mayor Gerretsen: A different interpretation.

Mr. Lettner: In Mr. Sterling's example we would not call it a structure, to start with; we would call it machinery and equipment. The interpretation section in the Assessment Act refers to buildings, structures, machinery and fixtures. Paragraph 17 of section 3 says, "machinery and equipment used for manufacturing purposes." The assessor looking at that item--staying away from the word "structure" but looking at that item--would ask: "What happens in that item? Does it change the nature of the goods?" If he decides it changes the nature of the goods through fermentation, through mixing, through blending or through putting electrical impulses through it, then he would decide it is not a structure but is machinery and equipment. As machinery and equipment, it should be exempt.

That is all we have said. We say that structures are assessable. When I looked up words that look alike, such as structures, everything is a structure; but machinery and equipment is quite apart. When you look at section 1 of the act, it defines land to include buildings, structures, machinery and fixtures.

Mr. Sterling: A layman reading this act, I would argue, would say a structure was something that is affixed to the ground and would normally be assessable under this act. That would be my definition of what a structure would be to a layman reading the act.

The other alternative, Mr. Lettner, is to define machinery in a very wide manner so that these people know that machinery does not include a large vat that is changing a product in some way. I do not know whether you have ever considered doing that.

Mr. Lettner: I am not the lawyer in this group here, but I think the courts have held that manufacturing machinery changes the nature of a product. Paragraph 17 of section 3 speaks of machinery used for manufacturing. If it changes the nature of a product--in other words, if you cannot put it back into the same--

Years ago I successfully or unsuccessfully argued the Alliston curling case. The decision there was that the ice-making equipment did not change the nature of the product so that it could not be put back to water, and therefore it was not manufacturing equipment. Assessors across the province are working on that interpretation of manufacturing machinery: It changes the nature of the product.

Mr. Swart: I concur with Mr. Sterling. I understand the interpretation of machinery, but certainly it would appear that these two sections are going to be contradictory. In this section here, you have just said that a structure can be almost anything. I agree with you; it can be almost anything, and it says, therefore, it is assessable, regardless. I think there is some conflict between that and the other section. There perhaps is not any disagreement here in principle, not on the committee at least, but it seems to me that there has to be a clearer interpretation of what machinery is. If it changes the process, perhaps that should be put in the act.

I do not want to belabour this. I think we can find a compromise in the wording if a compromise is necessary; it seems to me it is. I think we will find that compromise. We do not need to belabour it here, but I really want to make the point to the delegation that your interpretation is somewhat different from theirs. I did not want to leave the impression that all tanks and all structures were going to be assessable. They are not, at this point, if they are used in the process.

Mr. Sargent: Very briefly, Mr. Chairman. There is an old saying in government that all business is local and that (inaudible) in local government. Do I understand that amusement machinery is taxable?

Mr. Lettner: Machinery and equipment.

Mr. Sargent: Amusement machinery.

Mr. Lettner: At present, on amusement rides, the trestles, the foundations and the tracks are assessable and taxable. The other machinery--the motors and so on--are not.

Mr. Sargent: Is that a big item in local government?

Mayor Gerretsen: The way we understand it is that in the new act, amusement rides will be exempt in their entirety, and that is what we are objecting to. We really do not know what the reasons are for making them exempt.

Mr. Sargent: Maybe if it is park land or to generate, as Mr. Sterling said, for the economy. Maybe that is why it is exempt.

Mayor Gerretsen: If it is to generate employment, industry and what have you, we feel that the assessment mechanism should not be used to foster new industry. Why do it for amusement rides and not for a new motel that happens to open up down the road? Nobody would say, "That property should not be assessed."

We recognize the argument on the other side of the fence as well, that probably the amusement ride operators will say: "In today's market we have to come up with something new every year. We have to come up with a new ride every year." Therefore, if it were to be assessed, it would add on extra assessment, etc. I guess our argument is that in all likelihood there would also be rides that would be dismantled and no longer used. What you may be gaining on one side from an assessment viewpoint will probably be taken off on the other side, perhaps not in the same proportions.

The Vice-Chairman: For the sake of time, do you have a wrapup or last comments?

Mayor Gerretsen: They are the only two points we wanted to make. We like the new definition of "business" and we do not want amusement rides to be added to the list of exemptions, because we feel that by clearing up the matter of what is taxable or assessable on the one hand, on the other side the suggestion is that the number of exemptions be extended. We do not feel they are consistent with each other. That is the sum total of our presentation.

The Vice-Chairman: Does Mr. Guiler have something to add?

Mr. Guiler: No.

The Vice-Chairman: I thank AMO for coming in this morning. We appreciate your brief.

Mayor Gerretsen: Thank you.

The Vice-Chairman: Committee members, I want to remind you that we are recessed until three o'clock this afternoon. In other words, that means to hotfoot it down here for three, if possible.

Mr. Sterling: Will we make a motion to have our old chairman back? He was not nearly as hard on us.

The Vice-Chairman: He will be back later on today. The committee is recessed.

The committee recessed at 11:53 a.m.

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STANDING COMMITTEE ON GENERAL GOVERNMENT

ASSESSMENT AMENDMENT ACT

THURSDAY, NOVEMBER 27, 1986

Afternoon Sitting



STANDING COMMITTEE ON GENERAL GOVERNMENT

CHAIRMAN: McCague, G. R. (Dufferin-Simcoe PC)
Fontaine, R., (Cochrane North L)
Grier, R. A. (Lakeshore NDP)
Guindon, L. B. (Cornwall PC)
Henderson, D. J. (Humber L)
Lane, J. G. (Algoma-Manitoulin PC)
McKessock, R. (Grey L)
Pollock, J. (Hastings-Peterborough PC)
Sargent, E. C. (Grey-Bruce L)
Sterling, N. W. (Carleton-Grenville PC)
Swart, M. L. (Welland-Thorold NDP)

Also taking part:

Epp, H. A., Parliamentary Assistant to the Treasurer (Waterloo North L)

Clerk: Deller, D.

Witnesses:

From the City of Etobicoke:

Ketcheson, B., Solicitor
Kirk, J., Finance Dept.

From the Ontario Fruit and Vegetable Growers' Association:

Long, R., President
Cline, T. A., Solicitor

From the Ministry of Revenue:

Lettner, W. J., Assistant Deputy Minister, Property Assessment Program
Patterson, E., Director, Tax Appeals Branch

From the Institute of Association Executives:

Onyschuck, B. S., Counsel
Rogers, R. G., Past Chairman, National Voluntary Organizations
Gillies, J., Executive Director, Ontario Dental Association

From St. Catharines Civic Employees Credit Union Ltd.:

Dundas, D., General Manager
Gillam, G., Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday, November 27, 1986

The committee resumed at 3:36 p.m. in room 228.

ASSESSMENT AMENDMENT ACT
(continued)

Resuming consideration of Bill 131, An Act to amend the Assessment Act.

Mr. Chairman: I call the meeting to order. We have with us a representative of Reble, Ritchie, barristers, solicitors and notaries; he is Mr. Ketcheson, solicitor. There is also Mr. Kirk, finance department, city of Etobicoke. There is a copy of a letter to us in your file under the heading of Reble, Ritchie. Please proceed.

CITY OF ETOBICOKE

Mr. Ketcheson: I have been requested by my client, the city of Etobicoke, to appear before you today in support of the provisions of Bill 131 as they pertain to the taxation of nonprofit corporations.

As you may be aware, in our municipality we have Woodbine Racetrack and the Ontario Jockey Club which operates that facility. For the city of Etobicoke, liability for business tax by that group is a matter of some concern. In our view, Bill 131 confirms that the group will remain liable for business tax for the year 1987 and following. We see this as an important piece of legislation and we urge this committee to support it.

I have prepared a written submission for presentation to the committee and I propose to read it. Then if there are any questions on these matters, we will be pleased to try to deal with them.

We act as solicitor for the corporation of the city of Etobicoke. We have been requested by our client to attend before you this afternoon to express our municipality's strong support for the provisions of Bill 131 as they pertain to the restoration of business tax liability for nonprofit corporations.

The city of Etobicoke, like a number of other municipalities, has traditionally relied on the collection of business taxes generated as a result of the commercial activities carried out by nonprofit corporations. In the city of Etobicoke, the primary source of this revenue has resulted from the taxation of the Woodbine Racetrack.

The availability of this revenue source has been cast into doubt by a recent decision of the Ontario Supreme Court, upholding an assessment application commenced by the Ontario Jockey Club. The result of that decision was to establish an exemption from assessment for business tax in respect of the racetrack facilities operated by the Ontario Jockey Club throughout the province.

This decision is currently under appeal before the courts. However, if this exemption is upheld, our municipality will suffer a serious loss of tax

revenue both in terms of the tax years under consideration in that case and in terms of the liability for business tax assessment with respect to future tax years. The extent of this loss can be illustrated by the following figures.

With respect to tax years 1984 to 1986 inclusive, which were involved in the application before the court, it has been calculated by the city's finance department that the potential tax loss faced by the municipality is in the neighbourhood of \$2.3 million. If the court held that this sum had to be refunded in one year, the city's tax bills would have to be increased by about 2 mills in order to make that repayment.

With respect to the pending 1987 tax year, it is estimated that approximately \$880,000 is at stake with respect to the amount of business tax that would otherwise be generated as a result of the operation of the Woodbine Racetrack. This amount would represent approximately 1.3 per cent of the total business tax revenue that is anticipated to be generated throughout the municipality for that tax year.

15:40

It is apparent from the foregoing figures that the loss of this revenue source would place a major burden on the taxpayers of the city of Etobicoke and would seriously impair the ability of this municipality to meet its responsibilities in an era of increasing fiscal restraint. The city of Etobicoke, as a mature municipality, faces the constant challenge of balancing an increasing demand for services against a relatively fixed tax base. The loss of the business tax revenue associated with the operation of the Woodbine Racetrack, coupled with the announced loss of the Goodyear tire plant in Etobicoke, with estimated 1987 business taxes equal to \$796,000, would make a difficult situation almost impossible.

It is the position of our client that Bill 131 provides much-needed relief to the municipality by confirming that nonprofit corporations, including the Ontario Jockey Club, that engage in commercial activities will remain liable for business tax assessment as of 1987 and in following tax years. We therefore respectfully request, on behalf of the city of Etobicoke, that this committee support the inclusion of these provisions within Bill 131.

We also take this opportunity to urge upon the committee for its consideration the importance of resolving these matters as quickly as possible. The tax rolls for the 1987 tax year are due to be returned in December 1986. It would be of great assistance to the municipality, both in terms of calculating the amount of business tax required to be generated for the upcoming year and in terms of the collection of same, if this matter could be resolved as quickly as possible.

We thank you for allowing us an opportunity to appear before you today and we will be pleased to receive any questions you may have with respect to the foregoing.

Mrs. Grier: It goes without saying that I entirely support the position of the city of Etobicoke. Have they had any discussions with the Ontario Jockey Club? The OJC said it was going to appear before this committee last week and then said it would submit a written brief; I gather we have not seen it. Has Etobicoke discussed with the OJC what its position might be? I know it is not going to want to pay the tax. Can you perhaps define for us the issues that it sees with respect to this bill?

Mr. Ketcheson: We have not had any direct contacts or discussions with the OJC with respect to Bill 131. We were involved with following the progress of the litigation matter that was before the courts, but we have not discussed with the OJC this submission or the particulars with respect to Bill 131.

Mrs. Grier: It sounds as though the essence of this clause is going to come down to the definition of "business." Have you any advice to give the committee as to whether the wording that is included in Bill 131 could be improved upon? Can you answer any of the objections that we are probably going to get, or that we have got, that we need to list specific activities rather than a more general definition?

Mr. Ketcheson: I reviewed the provisions contained in Bill 131 as they pertained to the matter of nonprofit corporations. In my opinion, as a solicitor, the definition of "business" that is being proposed for the Assessment Act would be appropriate for capturing the type of activities being carried on by the Ontario Jockey Club. Without going into the particulars of the litigation matter that is before the court--I do not want to comment on that except to note that, as I understand it, the decision of the High Court of Justice in the case was based on the question of whether the proceeds being generated as a result of that commercial activity were characterized as being profits.

In my opinion, the definition that is proposed for "business" to be included in the Assessment Act resolves the issue by making clear that it is the commercial activity or business activity itself that creates the liability for tax and not this question of whether the proceeds are being used or dealt with as profits. I also note in passing that I think the issue is even more clearly defined under the legislation by the reference under section 7 of the act to the business of a racetrack. I presume that language was included under section 7 to make it clear beyond any sort of doubt that a racetrack in part is considered to be a business activity for the purposes of the legislation. I am satisfied that this material is properly drafted and would have the result desired by my client.

Mr. Epp: I very much appreciate the support the government has received on behalf of Etobicoke for this bill. It is a welcome change from some of the other concerns and reservations we have heard in the past few days.

Mr. Ketcheson: Our municipality appreciates the support of this committee and the support of the government in preparing the bill.

Mr. Epp: It also underscores what we have said all along, that it does not do anything for the provincial Treasury, that it is the municipal base we are trying to protect.

Mr. Sterling: I have come in a little late. I understand you have a distillery in your municipality.

Mr. Ketcheson: Two of them.

Mr. Sterling: Is it your understanding that your tax base will be increased in any way from the distilleries once this law goes into effect?

Mr. Ketcheson: Are you referring to the other provisions contained in Bill 131 dealing with machinery?

Mr. Sterling: Yes.

Mr. Ketcheson: I have not had instructions to review that matter and I do not really think I could comment on that. I am not sure whether Mr. Kirk is in a position to respond to that.

Mr. Kirk: No, I am not.

Mr. Chairman: The next presentation is from the Ontario Fruit and Vegetable Growers' Association. Mrs. Renie Long is the president; Mr. John van der Zalm is the executive secretary; Ted Watson is director of the Durham Growers' Co-operative; and there is Mr. Thomas Cline, QC.

Mr. Sterling: Before we begin, I am a little concerned. Because there is a minority situation in this parliament, three parties are very important to the makeup of committee work. I am disappointed there are no Liberals and no New Democrats here as members of the committee. I hope the whips, or anybody in the room, will make certain some of them get here. If we are going to make amendments to this bill later, I want people to know what they are talking about.

ONTARIO FRUIT AND VEGETABLE GROWERS' ASSOCIATION

Mrs. Long: This is Mr. Cline, Mr. van der Zalm and Mr. Watson. We have a short presentation that I will read.

The Ontario Fruit and Vegetable Growers' Association represents approximately 10,000 fruit and vegetable producers in Ontario. The association speaks on behalf of the producers in social and economic matters that affect our members. We wish to thank you for the opportunity to express our concerns about the proposed Bill 131, an Act to amend the Assessment Act. Within the horticultural and agricultural community, there exist a considerable number of co-operative organizations and business structures that are aimed at achieving cost savings for the producers rather than deriving profits from the operations of such structures.

The Ontario agricultural community is hard-pressed for survival in its place in international agricultural economics. We would like to draw your attention to the many programs the present government had to put in place to assist farmers to survive current economic pressures and hardships. For example, the provincial government, co-operating with the federal government, now is involved in a program assisting farmers for whom there is no economic future to make a transition from the family farm to, one hopes, a new place in the economic community.

15:50

To add further tax burdens to this struggling community, as proposed in Bill 131, will undoubtedly accelerate the exit from the farm. Our association has been actively involved in trying to reduce the imbalance of imports versus exports of fruits and vegetables in Ontario. Today, this translates into a \$300 million per year assignment.

Our members are equally concerned about the impact of Bill 131 on the status of many nonprofit organizations. Service organizations such as Lions and Rotary and denominational fundraising groups, which aim to aid our Canadian community at large, will also be penalized through Bill 131 in their

efforts to improve the quality of life and relieve needs that exist in Canadian society today.

The Ontario Fruit and Vegetable Growers' Association strongly urges the Ontario Legislature to reconsider passage of Bill 131, an act that will affect many fundamental Ontario traditions in the community through an unprecedented taxation on nonprofit organizations in this province. We sincerely thank you for the opportunity to express our concerns regarding Bill 131.

Mr. McKessock: Being a farmer, I am interested in your comments. I take it you feel this bill is not affecting the farmers directly, but indirectly. Is that it?

Mrs. Long: Through the co-operatives.

Mr. McKessock: Through the taxation of nonprofit organizations or through their properties. Are there any specific areas you can tell me about where it is affecting them?

Mrs. Long: Yes, particularly for apple storage facilities where growers go together as a co-operative, a partnership or a little corporation to build an apple storage. We now can store apples 12 months of the year in Ontario.

The federal government had a program called the federal storage assistance program that allowed groups of growers--there had to be a minimum of three--to receive a federal grant to build apple storage. These storages probably would never have been built if the assistance programs had not been made available. If the apple storage was on the farmer's own property, there probably would not be a problem with taxation, but because they now are set up in separate little parcels of land or are co-operatives, it can be anywhere. Mr. Cline may wish to add to that.

Mr. Cline: It is a situation where, if you have a particular type of facility within the farm gates, it is exempt from business taxation. If a number of growers get together on a co-operative basis and build the same facility outside the farm gates--for example, across the road--it will suddenly become subject to business tax if the present amendment goes through. I can see no fundamental distinction if you have a facility behind the farm gate or across the road or seven miles down the road. The added point that needs to be said is that these operations are not profit-motivated.

I act for a number of co-operatives that do not have any profit whatsoever. Anything that is received from the sale of their product is reimbursed to the member group.

Mr. McKessock: Perhaps I can ask the ministry whether it is the case that apple storage would not be taxable on the farm but will be taxable now as set up under a co-op.

Mr. Lettner: For business tax purposes?

Mr. McKessock: For the purposes of this bill.

Mr. Lettner: There are a number of cases that have been held in the last while. The Norfolk Fruit Growers Association in 1984 said that these activities were an extension of farming operations and were no different than if they were carried on by each farmer separately on his own farm. In that

case they wiped out the business assessment, and we were quite content with that.

In the Vineland Growers' Co-operative the same held true. These were just an extension of a farm operation, and we have not assessed them for business since these cases were decided. We do assess the United Co-operatives of Ontario in the facilities where they sell in competition with a hardware store; but the Norfolk Fruit Growers Association, the Durham Growers' Co-operative storage, the Vineland Growers' Co-operative and Produce Processors Ltd. have all been to court, and whether they made a profit or did not make a profit, they were all an extension of the farming operation and were exempt from business assessment.

Mr. McKessock: Are they still going to be exempt from the business assessment?

Mr. Lettner: Yes, they are still exempt.

Mr. McKessock: Under the business assessment, they will be exempt. Under property assessment--

Mr. Cline: I would take issue with the statement that has been made. The Durham fruit growers' case, which I argued, and the Norfolk fruit growers' case, which I argued, were considered and decided on the basis of the preponderant purpose of those particular organizations.

Now you are coming in and you are putting in a broad definition, which includes any business activity, whether such activity produces, or is intended to produce, a profit. It seems to me that what you are gearing in now is not the preponderant purpose of the activity but rather the commercial nature of the activity.

Mr. McKessock: Maybe we have the same problem we had this morning, that the interpretation is the problem. Perhaps words can be put in to clarify the interpretation, because what I hear is that you do not want the business assessment changed, and I am hearing from the ministry that it is not going to be changed; therefore, it must be the wording. It does not sound right. Is that right?

Mr. Cline: In my respectful opinion, the definition purely and simply is too broad. I was contacted the day before yesterday to attend with this group as part of the presentation to be made to the committee today. I sat in my office with the definition in hand. I looked out my office window, checked with the local assessment office to make sure these particular entities were not at the moment assessed for business assessment and tried to interpret the proposal. I concluded from my office window that the Royal Canadian Legion probably would now be taxable for business tax; the army and navy would be in a similar category.

I also noted that the ethnic halls, particularly in the community at Delhi, have been exempt until now. I do not know how anyone can argue that that is not a commercial activity. I would submit to you that they would be caught under this particular definition. Behind my office is the Simcoe Little Theatre. I would suspect that it would probably now be caught in this definition. Basically, in my submission, the definition is far too broad.

I take some comfort in saying this. In respect to my friend from the Ministry of Revenue, the Assessment Act, as I understand it, is to have

province-wide implications. I know of certain facilities in Haldimand-Norfolk that are assessed, and the same facilities in Oxford are not assessed. If you are now saying that you are going to leave it to the individual commissioner to determine what is assessable and what is not assessable then, with the greatest respect, I do not think legislation should be predicated on that assumption.

Mr. McKessock: We moved away from apple storage and brought in a lot of other areas here. Are these other areas that the gentleman was talking about in fact going to change from their present situation?

You mentioned the legion and other facilities. Are they now going to be taxable?

16:00

Mr. Cline: The question is what the court is going to say is assessable. In my view, just reading the definition and looking at these business activities, they are going to have some exposure to business tax: that is the Canadian legion, the army and navy, ethnic halls and theatre groups in communities.

Mr. McKessock: It boils down to the wording being a problem. I am all for having easier wording too.

Mr. Lettner: I do not know whether the wording is that much of a problem. There are a number of tests an assessor uses: the intent to make a profit; the characteristics of the business activity, such as the trading of goods and commodities; and the exchange of services for remuneration. The charter of the legion was set up to provide a facility for war veterans to get together; I do not think it was set up as a business activity. It is not supposed to be a business activity.

The Simcoe Little Theatre group is not a business activity if volunteers run the little theatre, whether they make a profit or not. They are not working full-time; they are not in competition with other businesses.

Precedents have also been set by other court decisions, and the court decisions on the co-operatives and growers are very clear that it is an extension of farm operations. If the farmer had that building, that cold storage, on his farm, the building would be assessed, but there would be no business assessment.

Mr. Cline: May I respond to that? If I may direct your attention to the explanatory note that accompanies the act under section 1, it says: "A definition of 'business' is added to the act and defines the term so as to include all commercial activities and not limit it to activities earning, or intended to earn, a profit." It seems to me that this indicates the intent of this legislation. Given that, it seems to me that, if this interpretation is implemented, the entities I have mentioned are exposed.

Mr. Chairman: May I interject for a minute? What kind of activity is the Binkley storage in your riding? It may not be called the Binkley storage.

Mr. McKessock: It is the same kind of storage we are talking about. It is a controlled-atmosphere apple storage.

Mr. Chairman: Is it a co-op?

Mr. McKessock: Partly. There are co-ops, or groups of farmers in on some storages in my riding.

Mr. Chairman: That is one that may be caught.

Mr. Lane: As a Rotarian, I am concerned about how you see Bill 131's impact on Lions Clubs, Rotary Clubs and fund-raising activities. Does someone want to address that?

Mr. Cline: Once again, it goes back to what the intent is. If you have a commercial activity, surely one of the tests of commercial activity is how it corresponds to an activity that is carried on in the private sector. If you have an activity, the operation of a camp, for example, may be one type of activity that is exposed.

Many of these activities are carried out on municipal land, and if you have that activity on municipal land and it becomes exempt, 30 per cent times zero is zero, so to speak. However, if that activity is off municipal land, then you may have some difficulty.

Let me give you a specific example. If you had a day care centre that operated within a church, it might very well be exempt because the church is exempt; it does not pay real property tax. If you had that same facility across the road in a hall that is operated by the church although it is not part of the church that operates the day care centre, and assuming it is taxable for real property tax, then it seems to me an argument could be advanced that a commercial activity is taking place in that building and the occupant would be subject to business tax.

Mr. Pollock: My questions are along the same line. I am concerned about charging Lions clubs and Rotary clubs business tax. I have no further comments on it other than that people would be upset to find out they would have to pay a business tax.

Mr. Chairman: We will probably get into that in clause-by-clause. We have a learned gentlemen expanding on the fruit and vegetable growers and our member is taking advantage of that. Mr. Lettner, do you have any other comments on matters raised?

Mr. Lettner: Elizabeth Patterson has something.

Ms. Patterson: The suggestion has been made that the cases referred to--Norfolk, Durham, Vineland, the growers' associations cases, the apple storage cases--were argued under preponderant purpose, and we do not argue with that. That is how they were argued and how they were won.

There is a real question about whether they should not have been won in any event, even under the ministry's understanding of the legislation because of a previous test that was variously called "business activity" or "commercial activity." It talked about a number of factors including whether a business was operated from fixed premises, whether it was operated on a full-time basis, whether it had paid staff, whether the type of the activity was also available in the community from commercial suppliers of goods and services or whether it made a profit. There was a substantial list of factors which the court considered in deciding whether a business was a commercial activity.

Then, with Caisse populaire de Hearst, instead of dealing with that

whole proportional number of factors, they came down very heavily in favour of one test, which was not whether the company did profit, because Hearst did profit, but whether it intended to profit. Subsequently, we lost the Jockey Club case and we were advised we were about to lose the Toronto Stock Exchange

~~case~~ **floor case**

If you accept that commercial business is a mix of those factors I have just described, and that is the way the courts have gone, then the Ontario fruit and vegetable growers, the Norfolk, Durham and Vineland co-operatives, are and should be exempt from business tax because all they are is an agglomeration of activities that could have been carried on on individual farms but for economic reasons are carried on co-operatively.

If we are talking about service clubs such as Rotary and Lions and so forth, I cannot see a situation in which they would meet commercial activity tests. They might organize an occasional luncheon or a trade fair or some sort of an organizational meeting in a banquet hall or use their own facilities, but if they did it in a banquet hall, that would be the place where the business activity was carried on. The banquet hall would be paying the tax and not the Lions or Rotary. If the essence of a business or an activity is what you are getting at with "business activity," that is a small part of what a service club is.

It should not come as a surprise to you that there will be some activity carried on by nonprofit organizations which would be liable to business tax. They were liable to business tax before the Caisse populaire de Hearst case and they will be liable to it afterwards. I am talking about, for the lawyers, the case of Re Loma Linda Foods (Canada) and the case of Goodwill Industries where a service organization operates a freestanding commercial activity, a store in one case and a restaurant in the other, in competition with other stores and restaurants in the community. They failed the commercial activity test before Caisse populaire de Hearst, and they will fail the test in this legislation after this legislation is passed if it is passed unamended.

16:10

You do not have to assume extension out of applying the principles of commercial activity to those kinds of activities we have been talking about today. You would and should have won your growers' cases on the basis of this legislation and if the Lions and the Rotary were to be added to the rolls, they would and should win cases to have themselves removed from business tax.

Mr. Guindon: My question to Mr. Lettner and Ms. Patterson regards structures, which were mentioned a while ago, such as those for apple storage. If something happens to it in the process, it is exempt from business assessment. Am I right?

Mr. Lettner: No. The refrigeration machinery and equipment in these apple storage places was held to be exempt.

Mr. Guindon: Because it stops something from happening.

Mr. Lettner: It is used in farming. Any machinery and equipment used in farming, and the foundations upon which it rests, is exempt. The act we were discussing this morning says "machinery used for manufacturing or farming purposes," which includes farm equipment. It was held in these cold storage places that the machinery for refrigeration was exempt.

Mr. Guindon: Would it be exempt in the case of a co-op?

Mr. Lettner: Yes. In all cases it is exempt.

Mr. Guindon: However, the whole structure is not.

Mr. Lettner: They are in buildings and the building is assessable.

Mr. Cline: Is it the intent that machinery and equipment used for farming purposes will remain exempt after this legislation?

Mr. Lettner: Yes.

Mr. Cline: I find that encouraging. I would not have read the legislation that way.

Mr. Lettner: Paragraph 17 of section 3 is not changed.

Mr. Cline: Bill 131 says, "The exemption from taxation under this paragraph does not apply to a building or structure or any part of a building or structure, notwithstanding that it forms an integral part of manufacturing or farming machinery or equipment, or of manufacturing process or farming operation."

Mr. Sterling: You are about the sixth group that has interpreted it one way and counsel for the ministry has interpreted it the other way. Normally, it is interpreted the same way as counsel has. Notwithstanding, the intentions seem to be ad idem but the words are giving everybody a problem.

Mr. Cline: For what assistance it may be, I argued the Norfolk Fruit Growers' Association in the Divisional Court, and we were successful in that case on the basis of the old verdict. If the Norfolk fruit growers came to me on the basis of this new wording and asked what their prospects were of getting an exemption, I would not hesitate to tell them that I think they would fail. If the intent is that the Norfolk fruit growers, to use them as an entity, are to be exempt on the basis that they are today, then that distorts the language of the statute, in my view.

Mr. Chairman: Henceforth, you may carry a copy of Hansard to your hearings as well as the bill.

Mr. Sterling: The whole idea of Bill 131, as I understand it, is to try to clarify some problems that have existed resulting from a number of lawsuits. With respect, because I happen to be one of your professional brethren, I find it difficult to sit here as a politician and a member of the Legislature and wonder if the legal fraternity cannot understand what the hell this thing says, how we expect anybody else in the province to understand it.

That goes to assessors, that goes to municipal courts which are going to be involved in this and that goes down to the members of the public. That is our problem, Mr. Lettner. We are hearing from a lot of people who do not seem to read the words the way you people are reading them. I am becoming more and more convinced that either some new wording should be proposed in front of this committee, by working with counsel for these various groups, or this committee may choose to do it on its own.

I think that is very dangerous stuff for the committee to do without the help of the ministry, because you are the people who have to put it on the track.

Mr. Lettner: In the Norfolk Fruit Growers' Association, the building is still taxable, is it not?

Mr. Cline: No question about that.

Mr. Lettner: But the machinery and equipment for refrigeration is exempt.

Mr. Sterling: Mr. Lettner, I trust you implicitly. I think you are a fine fellow and I believe 100 per cent what you are telling me. The unfortunate part is that neither you nor I is guaranteed immortality in this world or in our positions; you may have a little more secure hold on that than I. I do not know if that is true or not. The fact of the matter is that we have to deal with words and we have to deal with statutes and we are continuing to hear about problems with the words of Bill 131.

Mr. Cline: The assessment department consistently has taken a position, in cases I have had on this particular issue, that there are two issues when you have this type of situation.

You look at the structure. Their position has been: If you conclude at that point it is a building, the investigation ends.

The opponents of that particular position have said it is a two-pronged step. You look at the building and then, in effect, you dissect the building with what is inside the building. The part that is considered to be the machinery and equipment is, in effect, extracted from the assessment.

I will give you an example of the difficulty. The Norfolk Fruit Growers' Association, as this gentleman has raised, had evaporators suspended from the ceiling. They had a pack line, monitoring equipment and catwalks. That was all assessed. In Durham, an evaporator--the same thing, doing the same job--was exempt.

Given that it is provincial legislation, that causes considerable difficulty in my profession. With respect to my friend, I think the intent of the amendment, in so far as the machinery and equipment for primary purposes are concerned, is to legislate what has been the argument advanced by the department for a number of years. You can follow the arguments if you follow the reported decisions.

I have argued both sides, even if I have argued without--

Mr. Sterling: You are a lawyer.

Mr. Chairman: So is Mr. Sterling.

Mr. Sterling: I think we have to take the Treasurer at face value in terms of what he is saying to the Legislature in his speeches and in the debate. We take the intent to be that he was not trying to tax anything that was not previously taxed in a general sense.

I know there are these discrepancies across the province that existed because the assessors are not perfect. You are going to get discrepancies in any system you set up. One hopes the idea of Bill 131 is to cut down on those discrepancies and make the rules clear as to what is in and what is out. That is what we are trying to do here and that is what I, as a legislator who has a little bit to do with this thing, am trying to get straight.

Could we prevail upon you to get together with other submitters here or in the ministry to come up with some alternative proposal for words which would comfort you in terms of maintaining your particular position?

16:20

Mr. Cline: Needless to say, I am somewhat comforted in hearing what the intent is in the department and I certainly would make myself available to add whatever assistance I could be to this committee or to the staff of the department.

Mr. Lettner: I will be the first to admit there are inconsistencies at the present time across Ontario. The reassessment of all municipalities in Ontario has not taken place. To date, we have about 606 municipalities reassessed using a standard system of market value. There are still some 230 municipalities in Ontario where the assessments are frozen at the 1970 levels which we took over when the province assumed the assessment function.

The rolls being frozen, you will find inconsistencies. When we took over the assessment we found about 300 different methods of assessment. It is not surprising that in one municipality you will find something assessed and in another one that has been reassessed you will find it assessed differently. I can agree there are inconsistencies but we are gradually getting rid of them by doing reassessments, providing policy manuals and guides for the assessors, and doing everything to bring a standard uniform system across the province.

Mr. Sterling: I have just one parting shot. Unfortunately, I am seeing a situation--not speaking particularly of this group but from the sum total of the representations of people coming here--where perhaps the ministry is saying one thing but the assessors may go out and do something else. We need some words to make sure the minister's intent is embodied in this Bill 131 and I think it is up to you to provide them.

Mr. Epp: I think what is incumbent on us is that we listen to the various presentations that have been made, as we are trying to do. In the end, all of us will have an opportunity to make some changes in the House. The ministry has put forth the proposal that if there are amendments, then we do that in the House where the minister prefers they be made, at which time you may have an opportunity to speak to some of the changes.

Mr. Sterling: I appreciate that but the reason this bill is in front of this committee is because of the pressure by the Conservative caucus. Otherwise, the Liberal Treasurer (Mr. Nixon) would have liked to have put this bill through the House without public hearings. That is a fact.

Mr. Epp: Things have not changed in 42 years in that regard. To be honest, every government makes a proposal and it does not necessarily want things to go to committee. There is nothing different in that regard.

Mr. Sterling: We are finding there is a serious flaw in here. What I would like you to do so that subsequent groups do not find out there has been an amendment at the last minute--why argue over something that is an acknowledged flaw or appears to be an acknowledged flaw--is to go back to the minister this weekend and return to this committee and say, "We have looked at this and these are ways we can meet some of the objections we are hearing." Therefore, the next groups that come in can say, "This is now what we are dealing with." Because we may go through this whole process and decide yes, there should be some changes.

I am of the opinion right now, and I would suspect some of my colleagues are of the same opinion, that there is a significant gap between what the public understands Bill 131 to mean in law and what the Treasurer is talking about and what his intent is. I think, quite frankly, it would make the process go a lot easier if you go back to the minister and say: "Look, there are some problems here. Let us get it wrapped up as soon as we can so that the people coming in front of this committee are not talking about something that is going to be changed." I thought that would be a logical approach.

Mr. Chairman: Mr. Epp is probably well aware that if there is no change in the status by some manner or means, which will have to be the consent of the House, the clause-by-clause will be done in this committee.

Mr. Sterling: That is right.

Mr. Chairman: I say that because I got it from the clerk's table before we ever started these hearings and that has been confirmed--yes, in writing, but I threw the piece of notepaper away. I can get it again if you like. So you have some fancy work to do if you are going to get it out of this committee, for some of the reasons Mr. Sterling set out.

You have brought in some of the other things you like talking about too, such as ethnic halls, legion halls, army and navy. I recommend that Mr. Peterson retains his QC.

Mr. Cline: That is why I wore my red tie.

Mr. Chairman: Mine is redder than yours.

Mr. Epp: It has not helped others. The Premier is prepared to give up his QC and I think a few others are going to be giving theirs up.

Mr. Chairman: The next presentation; we are on time and I notice Mr. Onyschuk has an hour.

INSTITUTE OF ASSOCIATION EXECUTIVES

Mr. Onyschuk: I would like to introduce the delegation. I have with me Kenneth Graydon, chairman of the legislation committee for the Institute of Association Executives, which has more than 1,000 members, and some of them have already been referred to today; Rix Rogers, who is on my left, a member of the legislation committee and also past chairman of the National Coalition of Charitable Organizations, which is affected by this bill; and John Gillies, a member of the IAE legislation committee who is also the executive director of the Ontario Dental Association and can speak to the Professional Service Association matters.

Mr. Chairman: Sit down, Mr. Onyschuk. We cannot record it if you are standing.

Mr. Onyschuk: I think we decided I might highlight or go through the brief that has been filed with your committee. I am going to assume that committee members have not really had the opportunity of going through it in any depth, so I will try to walk the committee through it relatively quickly and then we will be open for questions.

On page 2 of the brief, we have set out who the Institute of Association Executives is. It is a nonprofit association, incorporated, and consists of

the presidents, executive directors, senior executives and managers of approximately 1,000 nonprofit member organizations across Canada that are composed basically of trade associations, professional and service associations, public interest bodies, chambers of commerce and local boards of trade and charitable organizations.

These latter associations cover a very broad spectrum. We have tried to give you a very brief sampling. The trade association area includes such diverse groups as the Canadian Urban Transit Association, Canadian Council for Native Business, Canadian Manufacturers' Association, which you have heard from, the Canadian Bankers' Association, for example, and the Farm Safety Association.

The professional and service area includes the Canadian Bar Association, the Ontario Dental Association, the Association of Canadian Film Craftspeople, the Canadian Institute of Chartered Accountancy and the Institute of Municipal Assessors of Ontario. The charitable organizations are from a very broad spectrum and I have given you some of those: the Multiple Sclerosis Society of Canada, Boy Scouts of Canada; there are about 600 of them. Public interest bodies that are members include the Canadian Mental Health Association, the Royal Canadian Geographic Society, all of the chambers of commerce, at the community as well as the national level, and the local boards of trade. In terms of Ontario, because this is a national organization, there are 761 members at present, representing 600 trade, professional and service associations including charities and public interest bodies headquartered in Ontario.

16:30

The reason I raise that and draw it to your attention here is that a very large number of these are national associations that happen to have their headquarters either in Toronto or in Ottawa. They can be affected if the wording of "business" is not changed, whereas our submission is that we do not think the minister intended to catch them. I think the drafting of the bill requires major amendment in that area. All the IAE associations operate on a nonprofit basis; all of them are exempt from federal income tax. I will leave with you, at the top of page 3, some of the things the IAE does that are not significant today in this respect.

The concern is the same concern expressed by the previous delegation before you but on a broader basis. Although it talked about the growing community which is farm related and in one particular area, the concern here cuts right across the board, catching trade associations, charitable organizations, chambers of commerce, local boards of trade, veterans' organizations when they have banquets or bingos, Kinsmen clubs or any other nonprofit organization when it engages in one or a series of commercial activities during any part of a year. That includes, by the way, trade unions, which are nonprofit associations. In that respect, they would be in no different a position.

The concern is twofold: (1) the definition of "business" is extremely imprecise and much too broad to accomplish the objective the minister and, I think, the House want to accomplish; and (2) clause (a) of the explanatory notes to Bill 131--and I have set it out on the next page--needs to be deleted because I think it furthers the conflict and in fact countermands what I hear the ministry saying is its intention.

That explanatory note is set up at the top of page 4. It is right out of your bill. It reads:

"The purpose of the bill is,

"(a) to provide that nonprofit corporations," for which I am speaking, "that engage in commercial activities in competition with business corporations or promote the interests and profits of their members are liable for business tax."

It is a matter of fact that most nonprofit organizations engage in commercial activity in one form or another, whether it is as small as a bingo, which can be done on a regular basis, or whether it is a trade show. I have given a list of types of activities I think would be caught. That explanatory note seems to state that the intention of the draftsman is to catch more than what the ministry states and more than what the minister stated in the House. I think that note should be deleted. It makes doubly clear that the purpose of the bill is to broaden the tax base to include nonprofit corporations, such as the groups I represent here today, because of the commercial activities they engage in, either for their members, because they are required to, or in order to defray the cost of providing service either to the community or to their members.

Why do I say that? The cases are quite clear on the point, and I will come to the the Caisse populaire de Hearst case in a minute. This legislation and the definition of "business" will take away the preponderant purpose test. It will wipe it completely clear. There will be no guidance for the courts, and I say this advisedly, on how to treat organizations subsequent to this bill.

When you go back to the definition of "business," which in the bill is "any business activity whether or not such activity produces, or is intended to produce, a profit," that catches every trade organization, every charitable organization, trade unions and the like.

The Treasurer, I note from Hansard, indicated in the House it was not his intention to catch this type of animal, and Mr. Lettner has said that publicly in this committee before.

My point in being here today is to offer a suggested amendment and to echo the comments already made by the growers. I agree with them. The definition is wrong, it is much too broad, you do not need it to catch the thing the minister wants to catch and it could be done another way.

On page 5 at the top, with the definition of "business" from the bill, the wording is very broad and it would catch the activities of all trade associations, charitable organizations and chambers of commerce. That is because the words "any business activity" are not defined, but when you couple that with the explanatory note, then the kinds of "commercial activities" that get caught--and I have listed a few: publication of books, which, by the way, that was the subject of the Oshawa Missionary College court case--under the present act were found not to be taxable.

The local assessors in Oshawa tried to get the Oshawa Missionary College because they were publishing books as one little entity to help in the college, actually in the handicrafts of the children they taught in the college. They had a book bindery. The local assessment office tried to assess them because of that one little activity. Under the existing legislation, think of what they would do with the definition of "business" as proposed by this bill.

There are the publishing of books, trade shows--most associations are involved with trade shows, usually at their annual conventions--the holding of seminars or fund-raising events, silly things like bake sales, bazaars, the Canadian National Institute for the Blind gift shops, for example, which they run in Toronto, or the greeting cards they sell, the War Amps' key chain manufacturing operation and co-operative buying groups. Some mention was made of that today, whether they are a union group or just a group of individuals who form a co-op to get better buying power. There are health clubs like the YMCA, day care centres, the Stratford and Toronto theatre and film festivals, and many more.

It is because all of them are doing a business activity. In the past, the local assessors have gone after the commercial aspect of some of these associations. They lost because of the preponderant purpose test developed by the courts, but that test goes back to the profit motive.

If the preponderant or overall purpose of the entire organization was the making of a profit, then it was caught. If it was not, if it was doing it to defray costs, then it was not caught. With the definition as proposed, if there is any business activity, whether such activity produces or intends to produce a profit, it gets struck right off the books.

The government's specific intention at the bottom of page 5, as I read it and the minister's statement in the House, is to correct certain recent court decisions and to catch into the assessment base some rather sizeable numbers that got knocked out primarily because of the Caisse populaire de Hearst case. Those are the racetrack, the commodity exchanges, the credit unions and the caisses populaires.

Bill 131 accomplishes this latter point very well because they are specifically included in the list of categories in section 4 of the bill. If you look at clauses 4(1)(b) or (i), they are now specifically listed as being included and are to be taxed at 75 per cent in the case of four out of five and 30 per cent for the last one.

16:40

The specific provisions of section 4 are sufficient on their own, in my opinion as a solicitor who practises in this area, to achieve the objectives of the government. The definition of "business" is totally unnecessary. The act has operated for over 80 years without a definition of "business." The courts have interpreted the act and that word "business" in the last 82 years, and they have done it in a pretty darn good fashion, except that five got away recently.

With respect to those five, in my humble submission, you do not need a broadsword where a small set of scissors will do. By having included the five specific categories the minister wanted to catch because of the last series of court cases on those issues, on the big tax losers, the legislation has been corrected.

I would draw to this committee's attention one other thing. You have in the present section 7 a whole list of specific types of uses that are taxed at various rates, so there is no magic, or you are not breaking the rules, by adding five more categories. You are doing what the Legislature has done over the last 80-odd years; you are just adding to the list. You do not need, at the same time, to go much further and come up with a definition of "business," which is imprecise and much too broad.

The other reason you do not need the definition is you will actually be creating harm. There are two reasons for it; I am at the middle of page 6. I have set out a quote, the ratio decidendi from the Supreme Court of Canada in the Caisse populaire de Hearst case, not on the point on which the caisse was exempted, but in terms of what the court said about the principle.

There are two things you should bear in mind. By putting the definition of "business" in the present act and by defining it as "any business activity," the attempt would be to recreate the commercial activity test Elizabeth mentioned and that was there in the Windsor-Essex case.

In Caisse populaire de Hearst, the court talked about that. It was not called "business activity;" it was called "commercial activity." What did they say? It is at the top of that quote, "Many community and charitable organizations, relying from time to time on what would be termed commercial activity to raise funds for the fulfilment of their objectives, could be classed as businesses by such a test." They quote the Windsor-Essex case. "To attach primary importance to the commercial aspect of an operation in question will offer, in my opinion, no sure or helpful guide. In my view, the commercial activity test is too indefinite to allow consistent application."

Then they go on to the second point. The court said, because it said it before in that case, if you had used the commercial activity test à la this definition of "business," or a "business activity," you are going to catch community and charitable organizations, which is not the intention. That definition, in any event, is too imprecise.

The second part of it is that by putting in a definition of "business" that knocks out the profit test, you will knock out the entire case law developed to date. I do not agree with Ms. Patterson that you will be left, except for this definition, with the case law as it stood. You will have the entire 80 years of case law wiped out with a stroke because the test will now no longer be: Is the preponderant purpose the making of a profit? This definition says it can be profit or nonprofit; if it is a business activity, you are caught. That will strike out the entire case law and leave the courts with nothing to operate with.

We are at the bottom of page 7. Why is it not possible simply to accept the word of the government and the minister that the intention is not to catch the activities of trade associations and charitable organizations or to leave this matter to be defined in a policy manual, which Mr. Lettner has talked about?

Perhaps it is because I am a lawyer, but the answer is on page 8. First, good intentions do not count for much in the interpretation of a statute in a court of law. The definition of "business" in this new act, if you put one in, would have to be given full meaning by a court. That court, looking at that section, could not find otherwise than to include any trade or charitable organization where a part of its activities had a business connotation or business activity. The entire operation of a trade association could be and would be a business activity. If you talk to the executive directors, they think it is a business.

Second, municipal assessors across the province have not in the past consistently shared the opinion of the government, even under existing legislation, that nonprofit, trade and professional associations and charitable organizations are not assessable for business tax under the act as it stood.

Over the last number of years, a few examples where nonprofit corporations have been improperly assessed and had to fight it in court include the Grand Valley Construction Association. Their alleged crime was that they acted as labour relations negotiators on the management side, much as the union might on the other side. That, the assessor thought, was a commercial activity and put them into a business.

The Ontario Motor League sold motor licences as agents for the province at the request of the province, and the city of Toronto assessors tried to nail them. They won, but it took a court case. Doctors Hospital--provincially funded hospitals are not taxed--was a private hospital, although nonprofit. The Toronto assessors went after it. It lost. I mentioned the Oshawa Missionary College. The argument was that because the missionary college had a woodworking plant and a book bindery to help train students in handwork, it was in business. There was the Canadian Life and Health Insurance Association. Somebody mentioned veterans' clubs. The Maple Leaf Services case was an instance where Petawawa tried to catch the veterans for running their building and renting it out as a banquet hall.

In each of those examples in the past, the courts have ultimately found in favour of a nonprofit organization, but after a lot of money had been spent. The courts have come down on the right side in all the cases except, and I will not argue it, caisses populaires, credit unions and then the jockey club came in on it. That would have to be corrected. In my opinion, that should be done by a small amendment, which is all that is needed, and not by a broad redefinition of "business."

The recommendations which I put to you for consideration are found at the bottom of page 9. I say take a small-bore rifle instead of a blunderbuss because that is all that is needed.

My submission is that in section 1 of the bill the definition of "business" is totally unnecessary and it should be deleted. The act has done very well in the courts over the last 80 years. If it ain't broken, don't fix it. It is broken in one area--or in five areas--and can be handled with a specific amendment, as is proposed in section 4.

I respectfully say you should delete the explanatory note (a). If you do not, the courts will be entitled to look at that note. That note clearly says, contrary to what the minister has said in the House and his staff have said here, any commercial activities of nonprofit organizations would be caught.

For greater clarity, I thought about how to accomplish the purpose that you want to accomplish. I suggest the addition of a subsection--the wording is at the top of page 10--so that you are left in concept with no definition of the word "business." You do not need it. You would have the specific categories in section 7, having added the caisse populaire, the credit union, the stock exchange, commodity exchange, race track, and then a subsection later, saying:

"A person occupying or using land for the purpose of a credit union, caisse populaire, stock exchange, commodity exchange or race track is liable for business assessment whether or not the person produces or intends to produce a profit in carrying on those activities."

16:50

I take the words your staff put into the "business" definition and put

them here where they belong because it is with respect to those five types of activities that you want to get the profit motive out. That section will accomplish it.

I acted for the select committee of this Legislature many years ago when it reviewed the Smith committee report on taxation. Assessment was one very important part of that report. I know the arguments that were made at the time. Clearly, then and now, trade associations and charitable organizations are considered to be for public purpose reasons and should not be and have never been considered to be subject to business tax in that respect. This would accomplish the purpose you want, but not cause problems beyond the area that needs to be nailed down.

I have taken much more time than I thought I would. That is perhaps the lawyer in me. I would be glad to answer any questions, and I am sure my clients would be prepared to answer questions as well.

Mr. Guindon: I want to take up with you the charitable organization discussion because I feel that in some cases charitable organizations are going overboard or could in the future go overboard. There are fund-raisers and there are fund-raisers. They can hide behind the nonprofit organization and create a lot of problems in the business sector. I can give you an example. In some areas, charitable organizations sell soft drinks at deep discounts to the public. It does create some interference in business matters in that line.

At some point, somebody has to step in and put some common sense in all this because it is hurting the economy of certain retailers. I would like your comments on that.

Mr. Onyschuk: I will give you the legal answer and then let Mr. Rogers deal with the broader issue.

If you leave the case law as it is now and if all that charitable organization was doing was trying to make a profit--the whole gamut across the board--then the preponderant purpose test, as the case law developed it, would catch that instance. I suggest it would lose its income tax exemption status.

That is why you should leave the existing case law. If you change it for the one instance--if there are any, and I do not know--you would be catching the thousands that do not transgress.

Mr. Rogers is very familiar with this area.

Mr. Rogers: That is exactly the point, as long as you have the Department of National Revenue rules in place, where every registered charity in the country has to submit an annual report and has to comply with the requirements that allow it to continue to be in that category. There is one set of controls there and the preponderant case law gives options for any group that does go overboard, to use your term, to be properly challenged. I do not dispute that may be appropriate from time to time.

We are not dealing with that directly in this piece of legislation, and the broad-sweeping caveats included here catch up everybody. Instead of dealing with the exceptions, you are dealing with the total ball of wax, which creates far more problems than it solves.

Mr. Guindon: You have not convinced me, but I will pass for now.

Mrs. Grier: Does the preponderant purpose case law allow a distinction to be made among credit unions, from a small church-based or locally based credit union to a larger one that may generate a profit?

Mr. Onyschuk: Yes, in my view, it would. That is a question that was asked by Ms. Patterson when we met earlier this week. If the intention is to catch all credit unions on an equality basis, you would need the additional clause I suggested at the top of page 10. Otherwise, if you just put in "the business of a credit union" and leave out the definition of business altogether, the argument could still be successfully made, on the basis of the case of the Caisse populaire de Hearst, of the small credit union versus the large. That is a policy question you would have to address.

Mrs. Grier: If your wording at the top of page 10 goes in, does that not preclude any distinction between the large and the small credit union?

Mr. Onyschuk: Yes, it would.

Mrs. Grier: How do we get around that?

Mr. Onyschuk: I would think you would have an equality argument in any event. I am not sure you can distinguish between the small and the large.

Mr. Epp: I do not think the purpose is to distinguish between small and large. One of the definitions is that it be in a fixed area, where the area is defined and so forth. It does not matter whether it is 500 square feet or 10,000 square feet. It is not our purpose for the definition to distinguish between the small and the large in themselves.

Mr. Sterling: Under Bill 131, if there is a church basement credit union, the intent is to capture it if it occupies 500 square feet in the church basement. Is that correct?

Mr. Lettner: No.

Mr. Epp: Not if it is not in a definable area, and it would not be.

Mr. Onyschuk: I would be interested in hearing a legal argument on why you think it would not be, based on the bill as it is. I had assumed it would be caught.

Mr. Lettner: Not a legal argument; an assessment argument. To have a business assessment, you must have realty assessment. The business percentage must be of so much realty space occupied by a tenant.

Most of the credit unions I know of that occupy church basements occupy it for one night or one day a week, with no defined area. They use the whole church basement. People come to the front and talk to their officers. There is not a defined area. They are not really in occupation of any area. They are licensees, if you want to use that term, but they are not tenants of the church basement; so there is no defined area against which to put realty assessment. If there is not a realty assessment, there is not a business assessment.

Mr. Onyschuk: What would prevent the assessors from coming in and cutting out 500 feet and then assessing it on a commercial basis, as they do in the case of universities where a cafeteria, as I understand it, is in some places leased to a tenant? They will go in and nail that tenant for both commercial and business taxes.

Mr. Lettner: There is a defined area in a cafeteria. There is nothing in the Assessment Act or in a policy that says the assessors, however good or bad they are, can make a defined area in a church basement where there is no defined area. The business assessment is levied against a realty assessment that is leased or owned.

We had the same problem the other day when we were talking about nonprofit day care centres occupying vacant school space. They occupy under a licence of occupation. They do not have exclusive occupation of it; so they are not tenants, and they are not liable to business assessment.

Mr. Sterling: In other words, you are saying that if you take Mr. Onyschuk's suggestion on page 10, that does not change the approach to a credit union in a church basement.

Mr. Lettner: It does not change it at all.

Mr. Sterling: Under Bill 131 and according to what Mr. Onyschuk was saying, as far as you are concerned, they would not be taxed for business purposes.

Mr. Lettner: Nothing would be taxed for business assessment that does not occupy a defined area against which we can put a realty assessment. To put a realty assessment against it, you must have either a lease or ownership.

Mr. Onyschuk: If there were a lease, your assessors could cut out that area, could they?

Mr. Lettner: If you are talking about cafeterias, it is my experience that most cafeterias lease a definite space and occupy that for business.

17:00

Mr. Onyschuk: The other argument available in your case, Mrs. Grier, is that if you leave the preponderant purpose test, then that small credit union can get out on that basis as well. You have at least two arguments. One I had not thought of and addressed that way. The other is that under the preponderant purpose test they will be clean of that.

Mr. Sterling: In Mrs. Grier's concern, it does not matter whether you are dealing with this or that. The same concern should be there, I guess, in terms of whether you are satisfied with the answer.

Mrs. Grier: I am trying to understand the preponderant purpose and what would take precedence, because I disagree with Mr. Lettner. I think it is possible, in lots of church basements, to have a defined space that the credit union occupies. There may be an office for their exclusive use. Would the preponderant purpose test exclude that credit union from being caught?

Mr. Onyschuk: If I may answer as a lawyer, if that credit union were owned by the church, if it were a part of the church, then the preponderant purpose test would say 99 per cent of the building and the purpose are religious activities. This one little room does not override that. That is what the case law says. I am afraid the definition of business may stand the whole thing on its head.

Mrs. Grier: That case law would not be upset by the inclusion of your page 10?

Mr. Onyschuk: No, but it would be upset by the inclusion of a definition of business as proposed.

Mrs. Grier: I understand that.

Mr. Sterling: If the committee decided it preferred the route Mr. Onyschuk recommends, will there be other problems than the ones identified by Mr. Onyschuk? In other words, the credit unions, the caisses populaires, the stock exchange, the commodities exchange and the racetracks have caused these significant problems. Are there other ones?

Ms. Patterson: The only concern I can express with respect to the draft that Mr. Onyschuk presented to you today and that we discussed earlier is that it is limited to the specific problems already identified, the credit unions, the racetracks and the commodities and stock exchanges. It does not deal with a test that we think has become too broad by talking in general terms about the sorts of things that should be taxed and the sorts of things that should be exempt.

The only case I am aware of is one resolved in our favour. It is very similar to a case decided some time ago. They both dealt with multiple listing services operated by real estate boards. One of them, in Windsor-Essex and before the Caisse populaire de Hearst case, was held to be a business activity and liable for business assessment. The second case, with the Kitchener-Waterloo Real Estate Board, was very similar. That case probably came forward because of the principle in the Caisse populaire de Hearst case; otherwise, it would have been governed by the Windsor-Essex case.

There certainly is a perception that there has been some broadening of business exemption available to nonprofit organizations. If we deal with those specific problems already identified, this does meet our immediate needs but may not meet the future needs of municipalities with respect to exemption broadening for nonprofit organizations. That said, it does meet our immediate needs. It does not set municipalities back or put them in a nebulous, uncertain position. We will certainly consider the amendment that has been put before us, and perhaps we can suggest some refinements.

Mr. Gillies: Can I follow up a thread that Ms. Patterson has espoused? We are dealing with the concept of equity, I think, for the groups we are concerned about. Her articulation of the province's concern is that our amendment may not encompass all the things which may happen in the future. That is certainly understandable.

If the province has concerns about what may develop in the future because of the changing nature of the activities with which we are dealing, will it not be much more within the resources of the province to address that issue at the time rather than leaving us all in the position of facing the potential cost of a defence to maintain the status quo?

It just seems reasonable that since the province is the one with the problem and the resources, then it is the one that can deal with it should its perception of that problem change. But in our understanding of this bill as it is now presented, we are all left vulnerable to having to defend ourselves in the court system to prove that we are in fact exempt. That is not a very desirable place for any of us to be, particularly the charitable

organizations, which are going to use money you have donated to defend that particular set of circumstances.

Mr. Chairman: That is a reasonable observation, I would say.

Mr. Onyschuk: That is one point I would have made. The other is that the multiple listing service case was decided by the courts the right way, as the ministry wanted it. There is another example, despite the Hearst case, where one can say, "It works; therefore, what do you need to fix?" We discussed the five specific examples with the ministry earlier this week. This act over the years has added categories, as categories will require to be added. That is a fine-tuning process that is not new and can continue.

Mr. Sterling: One of the problems I have with your amendment is that when we in a committee accept an amendment dealing with a matter like this there is always a problem about the community at large having some knowledge of what is going on here. It is sometimes difficult to let people know that there is legislation going through or dealing with whatever.

When you talk about racetracks, you are talking about not only the ones that are profitable, such as Greenwood, Milton, Mohawk and Windsor, but also some that are not very profitable and provide a significant outlet for our agricultural community as well as for some of our horsemen and our horse industry, which is not the healthiest part but which is very necessary to those communities. For instance, there is the one at Orono, and I have one in my riding at Spencerville, which is on agricultural society land. If we accepted this kind of amendment, would they be stuck?

Mr. Lettner: Racetracks on agricultural society land are exempt. There are two racetracks operating in Ontario today that pay taxes and operate on agricultural society land. They pay only through their good nature, because they want to pay. I refer to the Barrie and Orangeville racetracks. They are exempt from realty and business taxes because they are on agricultural society land. All other racetracks that are not on agricultural society land with the exception of four, namely, Milton, Fort Erie, Toronto and Etobicoke, pay both realty and business taxes.

Mr. Onyschuk: The same would apply to county fairs. That is why county fairs are okay and would still be okay, despite the fact that somebody might argue they are businesses, because they are on agricultural land or agricultural fair land.

Mr. Lettner: Agricultural fair land is exempt.

Mr. Sterling: I guess what I am saying is that if you run a regular racing program and run it as a business, my equity argument in terms of this whole thing would be they should be taxed the business tax. If they are running a two- or three-day race meet per year or whatever, then they should not be taxed as a business. I do not find that as a business as such in terms of taxing the whole thing. I do not know whether the system works that well now.

Mr. Lettner: With the exception of the four that the courts exempted, we have assessed all the rest that are being run as businesses. They are Sudbury Downs, Flamboro Downs, the Windsor--

Mr. Sterling: London?

Mr. Lettner: That is right. I have a list of them--

Mr. Sterling: Okay. That is fine.

Mr. McKessock: You say they are assessed and pay tax?

Mr. Lettner: They are assessed and pay business tax.

Interjection.

Mr. Lettner: The Barrie Raceway is on agricultural society land and the Orangeville Raceway is on agricultural society land, but they both pay business tax voluntarily.

Mr. McKessock: I heard you say they pay because they want to. There must be some specific reason why they want to.

Mr. Lettner: I think they give a grant to the municipality in lieu of taxes.

Mr. Pollock: Mr. Lettner, just in your broad sense of business, could the International Plowing Match be taxed? They certainly do a lot of business, and they are not on agricultural fair land.

17:10

Mr. Lettner: No, it would not be. To start with, you have heard how good and how bad the assessors in the province are. We cannot put on a business assessment one day and wipe it out the next day. We have to go into it with a degree of permanence. At the international ploughing match, if I understand it correctly, they are not even tenants or owners. They go in on somebody else's land and run a plough up and down.

Mr. Pollock: They do a lot of business; there is no question about that.

Mr. McKessock: Are you recommending they move out of Peterborough and move to Grey?

Mr. Epp: You are not recommending it, though, are you, Mr. Pollock?

Mr. Pollock: I certainly am not.

Mr. Chairman: Are there any other questions? Thank you, gentlemen, that is it.

ST. CATHARINES CIVIC EMPLOYEES CREDIT UNION LTD.

Mr. Chairman: The next presentation is from the St. Catharines Civic Employees Credit Union. Mr. Dundas is the general manager.

Mr. Dundas: Thank you, Mr. Chairman, and ladies and gentlemen. I have brought with me for additional support our legal and governmental affairs counsel from the Ontario Credit Union League Central, Mr. Gillam. Would it be acceptable if I got into the brief and read it to you?

Mr. Chairman: Whatever you like.

St. Catharines Civic Employees Credit Union Ltd. is one of many small,

closed bond credit unions across Ontario. We would like to thank the provincial Treasurer and the committee for this invitation to present our views on the proposed revisions to the Assessment Act. We appreciate the committee members' interest in our co-operative movement and the ordinary citizens of Ontario we represent.

We do not presume to speak for all credit unions, as the larger ones have lawyers and lobbyists to present their views. No doubt the government and opposition find it somewhat perplexing that credit unions and caisses populaires appear so disunited. In fact, credit unions represent many diverse interests, policy directions, communities, ethnic origins and linguistic and cultural influences on many issues. They simply appear different because of the foregoing. They do, however, agree and practise most co-operative principles. Our diversity is the cause of this impression and we ask you to see beyond the surface numbers and complexity of credit unions.

The credit union movement was given its greatest impetus because we took those people the chartered banks did not want. The banks and trust companies simply would not lend money to these people and could not relate to their basic needs.

They made loans to Mexico, Brazil and Argentina. Based on the principle of self-help, people banded together to create their own institutions. This is especially true outside the major populated areas. Credit unions operate on volunteers, democratic management and boards and low-margin earnings, making little provision for the major returns banks and private financial institutions require.

Most small, closed bond credit unions do not serve the public and do not engage in commercial lending or commercial services. We serve the employer groups and industries that our members work for. Now that we have achieved a measure of growth and respectability, the banks, trust companies and large private enterprise institutions want our members and their business back. If we are to continue to survive, small credit unions must accept numerous limitations. We cannot join vast expensive programs, services or networks that larger institutions offer. We do not have the fund-raising powers, earnings margins or membership base to compete. The result of most of the foregoing is obvious, as credit unions have decreased in number from more than 1,600 to 850 in the past 10 years.

The current government has proposed taxation of all credit unions under the Assessment Act. Our position is simple. If you tax small closed bond credit unions and at the same time impose a levy of harsh assessments under the government's Program for Change, you will put us out of business.

Proof of that need be only the net earnings margin we enjoy compared to major institutions. Our not for profit but for service policies clearly yield net earnings 25 per cent below those of the major banks and trusts, according to Ontario Share and Deposit Insurance Corp. statistics of June 3, 1986. If we have to levy more fees and higher rates to absorb these costs, we will completely defeat the concept of people co-operating together to promote the principles of self-help. We will also be so uncompetitive that we will vanish from the provincial economy.

We employ many people in small towns and cities where most major banks do not adequately serve or have left. This legislation is hostile to small co-operatives of all types.

The litigation before the courts between municipalities and near-bank credit unions indicates these larger units have abandoned us in favour of their own interests. They want to cut their losses and go for a reduced rate of tax, rather than the 75 per cent rate banks pay.

By the time we pay business tax, income tax on enforced accumulation of reserves under OSDIC bylaw 5 and the proposed assessments in the government's new Program for Change, most of us will be either in deficit or performing so weakly we will be unable to pay even a token dividend on members' share capital. We will fail, and the banks and trusts will have won by legislative advantage what they could not achieve on their own.

We therefore ask for exemption from business tax for small closed bond credit unions and small credit unions not engaged in commercial services.

In addition, we request all parties to spell this out clearly in legislation and to amend the bill to ensure our position is protected. Vague assurances about instructions to assessment officers, which may be changed at the whim and pressure of municipalities or their pressure groups, is not satisfactory. We need strong support from our province, not more taxes.

Mr. Guindon: I think your brief is a good one. If you do not mind answering this question, how much business do you do in a year? What is the total?

Mr. Dundas: My assets are stated at the bottom of the front page, where it says we have assets of \$17,340,426 as of October 1986 and 4,224 memberships of civic employees and workers.

Mr. Guindon: You have 850 members?

Mr. Dundas: No, we have 4,224 members as of October 31.

Mr. Guindon: Perhaps Mr. Lettner can help us. Is there any protection to small unions, or will they get the same business assessment as the banks?

Mr. Lettner: The business assessment on the realty they occupy will be at the same percentage as a bank. It is 75 per cent for financial institutions.

Mr. Guindon: In your case, what does that represent?

Mr. Dundas: Probably \$10,000. We cannot afford it. By the time we pay out and place into reserve for solvency under OSDIC bylaw 5 one quarter per cent of our shares and deposits each year, until the end of 1987, that would leave us a very small return for our membership.

17:20

The additional spectre, which I realize is not facing this committee and perhaps with which you are not familiar, is that under the Program for Change, the province currently has heavy assessments through the OSDIC for rehabilitation of credit unions in deficit situations.

We are not a deficit credit union. We are a credit union that has been functioning properly. Our members have been honest. They have paid back their loans and obligations. They are transit workers, city workers, firemen and

policemen. We have not had the losses that other community credit unions have, but the fact that the loyalty of our members has been strong has been a major factor in our success. We are not a raving success or anything like that, but we are doing the best we can under the circumstances.

But with the pressure that we face for business tax and the dollar bills that we are talking about for the Program for Change, I have estimated it would impact on us to about \$50,000, \$10,000 more for assessment here and \$50,000 for the mandatory transfer to our reserve for financial stability under the OSDIC bylaw. That would leave our members with virtually nothing or very little in the way of a dividend. I think the net result would be a serious weakening of one of the members of the credit union movement that has been supporting the rehabilitation effort.

You have to face it. The whole picture has to be considered when you are dealing with this issue. It is like the parable in the Bible about the seven cows. You have seven fat cows and seven lean cows. The seven lean cows come down and eat the seven fat cows and they are still lean.

That is exactly what this adds up to. Our estimation is that in a 10-year period we could easily see 50 per cent of the jobs in the credit union movement gone because of the combination of these measures, this Assessment Act revision and the Program for Change as it is proposed to us right now. That would represent about 7,500 jobs in Ontario.

There are some serious considerations involving small credit unions. Our credit union was founded basically to provide benefits for our members. It was founded by a bunch of police people who wanted a health plan for their employees, for firemen and policemen. They did not have one. That has been our philosophy. We do not charge anything for chequing, for utility payments.

The whole thrust we are getting to here is that if you are making a one per cent return on capital and assets, you can look forward to paying taxes, but if you are only making one half of one per cent, that is a different type of margin. When you start taking from that, you soon get to zero pretty quickly.

That is the basis of the credit union movement. We did not start out to make a lot of money. We did not think we had to make a lot of money. Our philosophy was different. The same return did not have to be sent to Toronto on October 31 as the chartered banks do. The money and the employment stayed in the municipality and it served the citizens of that town. We are not on the same playing field as the chartered banks. The chartered banks are \$60-billion to \$100-billion corporations. We are just a little dinky \$17-million credit union with 10 employees and a janitor. We buy a lot of stationery and pay for snow removal and things like that.

All over this province there are credit unions in places where no bank will go. They have been there and left. I have even seen credit unions foolish enough to move into buildings the banks left. They made a go of it, not because they were making a lot of money but because they were there to serve the public. That is why we grew and why we were created in the first place. We tried to do something the banks were not interested in doing until they started to lose their shirts outside Canada. Now, all of a sudden, the average Canadian is the real, good, solid type. He is the kind of guy you want to make an investment in now. The banks are fighting like blazes for that fellow's business.

I put it to you that we are entirely different. There is no justification, in my mind, for a 75 per cent rate. If any rate is being considered, it will have to be very token. Some day, I am sure, we will be glad to pay business taxes, but this is not the time, because of the other demands on the plate.

Mrs. Grier: Did you pay business tax before 1983, when the Hearst decision came down?

Mr. Dundas: No, we did not.

Mrs. Grier: You were exempt then. You heard the earlier discussion, I suspect, of Mr. Onyschuk and his suggestion that the wording of the act be "A person occupying or using land for the purpose of a credit union, caisse populaire...is liable." Would that, in your opinion, change the situation in the bill as it is now proposed? Where do you operate from?

Mr. Dundas: We operate from our own property.

Mrs. Grier: You would be caught.

Mr. Dundas: We would be caught under that definition. Some credit unions had foresight and planning. They built their own buildings or whatever.

Mrs. Grier: In your opinion, the definition of whether or not you have your own premises is not a good enough distinction to make between a small nonprofit and a larger--

Mr. Dundas: Absolutely not. I do not think the primary purpose of our trade union is for profit. The only reason we have any reserves at all is that the province forces us to under the solvency requirements; otherwise, we would give every dime we could back to our membership.

Mrs. Grier: Can you suggest any criteria that can be used to make the distinction between the quasi banks and the credit unions, such as yours and the one I belong to?

Mr. Dundas: The difference between us is that we deal with the average worker. We do not make commercial loans nor do we have commercial mortgages; we do not offer lock-box service where you can collect your receivables; we do not have major cash flow transfer networks; and we do not have commercial experts. We do not receive any tax flow-through benefits on loan programs from the federal government, whereas banks receive huge, gigantic subsidies through small business development bonds and things of that nature.

Mrs. Grier: Do any credit unions get those kinds of flow-throughs?

Mr. Dundas: Only those involved in commercial activities, if they are involved in those federal type of loans.

Mr. Chairman: Are there any further questions?

Mr. Epp: I gather that you are a civic employee with a credit union?

Mr. Dundas: Yes.

Mr. Epp: How many employees do you have?

Mr. Dundas: I have 10 employees and one part-time employee.

Mr. Epp: No. I mean, how many employees in the city of St. Catharines do you service?

Mr. Dundas: There is a prospective group of about 6,000 employees plus their families.

Mr. Epp: In the city of St. Catharines?

Mr. Dundas: St. Catharines and area. Our bond of association also takes into account the regional employees, who are the city policemen.

Mr. Epp: It includes just civic employees?

Mr. Dundas: Yes.

Mr. Epp: I was looking at this number. I thought 4,200 was high for the city of St. Catharines to employ.

17:30

Mr. Dundas: There are other employee groups involved: hospital workers who are nurses' aides, dieticians, people such as that. There is the hydro commission, the works department, the transit commission and the police department, which is on a regional basis, so we have regional government employees as well.

Mr. Epp: But they are employees of the cities or agencies thereof.

Mr. Dundas: Yes. Our bond of association is strictly for civic workers. We are not open to the public and we do not deal with the public.

Mr. Epp: If you have a profit, do you give that profit back to the employees?

Mr. Dundas: Yes, that is correct.

Mr. Epp: Something like a dividend.

Mr. Dundas: Yes. Last year we gave them a six per cent dividend. That was the lowest we had given them in years. It is going to go to less than five per cent this year because of the capital adequacy requirements of the province for credit unions.

Mr. Epp: To that extent, it would not be dissimilar to a bank which gives dividends or something back to its shareholders. They may also show a profit. You do not show a profit, but they give dividends to their shareholders.

Mr. Dundas: They give dividends to the shareholders, but their margin of profit is at least 25 per cent higher than a credit union's. These are statistics which can be borne out by the Ontario Share and Deposit Insurance Corp. We are not on the same playing field as a chartered bank. We do not have a world network and we do not make loans to foreign countries. We may give a little token foreign aid to world credit union organizations, but that is about all.

Mr. Epp: You understand that in trying to find some suitable definition, giving foreign aid or having a world network or something of that nature is not part of the definition. That is what we are wrestling with here.

Mr. Dundas: The only thing I can say is that we are very small compared to a chartered bank. I fail to see the comparison in terms of an assessment rate.

Mr. Epp: But if you compare yourself with business, you realize that a business, whether it is small, whether it is a ma and pa operation or whether it is a General Motors, we do not exempt those people who have the ma and pa operation as opposed to the General Motors. Do you see what I mean?

Mr. Dundas: Yes, I see what you mean.

Mr. Epp: You have to use something else as a definition in order to determine whether there is going to be an assessment.

Mr. Dundas: The activities we engage in are not designed to make a profit. They are only designed to cover the cost of the activity and there is very little room for expenses.

Mr. Epp: To that extent, you are competing with the banks by giving services to the members.

Mr. Dundas: We give service to the members, but I really do not think we compete with the banks because their abilities and their powers are so much superior to ours. I cannot see the comparison.

Mr. Lane: My question does not really relate to the bill, because it happened without the benefit or the penalty of the bill. I am very alarmed when I see we have dropped from 1,600 to 350 credit unions in the past 10 years. That alarms me because I have been a member of a very small credit union for about 40 years in the northern part of the province, and I know how much good these credit unions do for people who are isolated. Banks are far away in many cases, there is a lack of credit and all those things pile up. I wonder what the cause has been for the decrease in the number of credit unions in the province, without this bill, obviously, because the bill does not affect that.

Mr. Dundas: One of the major reasons is that as some of these smaller credit unions grew, the driving force behind them was a ma and pa operation out of somebody's basement. The thing eventually grew and became bigger. Sometimes the people died off; at other times, they simply could not afford the bureaucracy they were running up against. It is like any small operation. Sooner or later, you have to comply with a lot of rules, you have to do a lot of reports and you have to have an auditor. Many of them lost money due to the economic downturn in the 1978-82 cycle, and a lot of them merged because it got beyond them.

Mr. Lane: You are already overpenalized, then, and this would add to your problem.

Mr. Dundas: Basically, we are supporting the consolidation of that movement. It is already going to take a number of years for us to cover the shake-out of that, before we add any more costs on top of the heap. Because we are a successful credit union, it could be argued that we are being selfish, but we are paying a very high cost as it is to help our brother and sister credit unions and to keep members' deposits safe and secure in this province.

If the compaction of the credit union movement continues the way it is going, the major institutions are going to have a field day with Canadians. They will be able to do anything they want to do. We have kept them honest for many years through products such as weekly mortgages and daily savings accounts. The weekly mortgage, for example, which was invented by the credit union, takes at least seven years off a guy's mortgage. I do not think the banks would have volunteered seven years' interest to anyone in this room for free.

Although we are small potatoes in a lot of ways, we perform a function that is really important; yet we do not do it on a margin that justifies being called a business. If you are in retail and you sell an article, 60 to 70 per cent of the value of that is marked up. We do not operate on those kinds of margins at all. We operate on a very thin basis, because the movement started out on a volunteer basis, to a large extent.

Mr. Lane: There is no question that the credit union movement has been a great assistance to many people in this province and other parts of the world. I, for one, am very sorry to see a decrease of that percentage.

Mr. Dundas: It is an indication of what can happen if we keep getting more and more sticks put on our back. I am not saying we do not want to shoulder our responsibilities as good citizens in this country some day. I am saying this is not the time, because of other circumstances with which you members of the House may not be familiar.

Mr. Chairman: Are there any other questions? Mr. Epp, do you have any further comments?

Mr. Epp: No. I appreciate the presentation.

Mr. Chairman: Thank you very much, gentlemen. We will meet next week, same day, same time.

Interjection: Same place.

Mr. Chairman: Same place too.

The committee adjourned at 5:38 p.m.

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STANDING COMMITTEE ON GENERAL GOVERNMENT

ASSESSMENT AMENDMENT ACT

THURSDAY, DECEMBER 4, 1986

Morning Sitting



STANDING COMMITTEE ON GENERAL GOVERNMENT

CHAIRMAN: McCague, G. R. (Dufferin-Simcoe PC)
Fontaine, R., (Cochrane North L)
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Guindon, L. B. (Cornwall PC)
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Lane, J. G. (Algoma-Manitoulin PC)
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Sargent, E. C. (Grey-Bruce L)
Sterling, N. W. (Carleton-Grenville PC)
Swart, M. L. (Welland-Thorold NDP)

Clerk: Deller, D.

Witnesses:

From the Ontario Flour Millers Association:
Milligan, P., Counsel

From Reid Milling:
Silk, K., Vice-President and General Manager

From Pittsburg Plate Glass Canada Inc.:
Seddon, V., Manager, Glass Division

From the Ministry of Revenue:

Epp, H. A., Parliamentary Assistant to the Treasurer (Waterloo North L)
Lettner, W. J., Assistant Deputy Minister, Property Assessment Program

From the Toronto Stock Exchange:

Poole, R., Counsel
Petrillo, L., Vice-President, General Counsel and Corporate Secretary

From Dofasco Inc.:

Beatty, W. W., Taxation Manager
Gerrard, D. A., Supervisor, Municipal Tax

From The Algoma Steel Corp., Ltd.:
Nardi, A., Senior Tax Analyst

From Fair Havens Bible Conference:
Smith, C. H., Executive Director

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday, December 4, 1986

The committee met at 10:09 a.m. in room 228.

ASSESSMENT AMENDMENT ACT
(continued)

Consideration of Bill 131, An Act to amend the Assessment Act.

Mr. Chairman: The first presentation on our sheet is from the Ontario Flour Millers Association. Peter Milligan is the counsel and Mr. Silk of Reid Milling, vice-president and general manager. Will you please proceed.

Mr. Milligan: The presentation this morning has been prepared by Nabsico Brands Ltd., Reid Milling Division and Robin Hood Multifoods Inc., two of the largest flour millers in Ontario. The committee will note that there is a letter on file from C. R. Mayer, president of the Ontario Flour Millers Association, indicating complete support of the submissions that will be made to you.

I ask you to turn to page 1 of the brief that is before you. There is an executive summary, and given there is a limit on the time this morning, I would simply like to summarize what is in that executive summary.

First of all, the process by which flour is milled or manufactured requires extensive use of large tanks or silos to carry out cleaning of the raw wheat and blending activities. Those blending activities are to ensure that consistent protein and moisture levels are achieved, and that relates directly to the various types of flour that must be manufactured to meet certain specifications. For instance, you do not use the same kind of flour to make bread that you use to make Oreo cookies.

The important elements in the process are the insurance of consistent protein and moisture levels, which in turn result in a consistent bake rating. That bake rating results in a cookie, a cracker or a bread loaf that will ultimately meet the specifications of taste and consistency and even fit into the package. You can imagine the terrible difficulty Christie Brown might have if the Oreo cookie was a centimetre too large. That is the reason flour manufacturers have to use large vessels or tanks in their extensive blending processes.

In the view of the Ontario Flour Millers Association and the two companies, section 3, paragraph 17, currently provides an exemption for the process tanks they utilize. It is their view, however, subsection 2(1) would make all structures, including these process tanks or silos, subject to taxation.

We have had an opportunity to review certain policy guidelines prepared by the ministry and submitted to this committee in a brief dated November 13. It is the view of the flour millers association that they conflict with the proposed amendment and that they are really evidence of the true purpose of subsection 2(1), which is to change fundamentally the taxation policy related to structures, particularly process tanks used by manufacturers.

At the same time, the flour millers wish to point out that it is their understanding that at present the Ministry of Revenue does not assess machinery and fixtures of nonmanufacturers on a province-wide basis. I will dwell on these points in a little more depth in a moment.

At page 2 of the brief, it is the view of the flour millers association and the presenters this morning that this committee should report back to the Legislature as follows: Proposed subsection 2(1) is a fundamental alteration of tax policy in this province. Proposed subsection 2(1) and the proposed policy statements are clearly contradictory in that if all structures are to be taxable, the ministry cannot proceed to exempt certain of them by informal policy or practice. It is the view of the flour millers that the present section 3, paragraph 17 of the Assessment Act requires no clarification whatsoever, particularly in the flawed proposal; therefore, the proposed subsection 2(1) of Bill 131 should be withdrawn.

Mr. Chairman, in the brief, the submitters and I have reviewed for you and the committee the background of flour men to the manufacture of flour. The sole purpose of the large tanks or silos is the blending and cleaning process prior to the actual grinding of the wheat into the flour itself.

There have been suggestions to this committee and informally that the sole purpose of the use of these large tanks or silos by the millers has been for the introduction of ratsbane into the wheat. This is a grossly inaccurate statement and is contrary to sworn evidence given in the Supreme Court of Ontario by representatives of flour millers, particularly the Reid Milling people who are involved in the now somewhat infamous Nabisco case.

Let me put to rest that misconception. Any ratsbane that would be put into a silo would fundamentally spoil that wheat. There would be no opportunity to use that wheat for any purpose whatsoever other than to bury it in the ground. Ratsbane would not turn into a gas, as does the phosgene pellets, which create a phosgene gas. The pellets themselves are of the chemical phostoxin.

They are used not to kill rats or rodents; they are used in the cleaning process after sticks, stones and other extraneous matter have been removed from the wheat through a cleaning process. They are used to kill organisms or their eggs that might be in the wheat which, if allowed to be maintained in the silo, would cause heat, which could cause terrible explosions which have been seen across this continent where those kinds of infestations have occurred.

Therefore, we wish to lay to rest this misconception that the only purpose for silos was to put ratsbane in them. Ratsbane would not turn into a gas. If you put the ratsbane in, the ratsbane would come out and the wheat would not be able to be used for anything.

However, I would ask you to look at page 3 because we have summarized, at the bottom of that page, the sworn testimony given in the Nabisco case that has been referred to by ministry staff. You will see there were a number of other things happening in the silos, such as the purpose to which the silos were being put, what they were being used for.

The wheat, when it was initially received, was immediately rough cleaned and placed into a holding silo. Tough wheat, or wheat that had high moisture, was segregated into a separate holding silo for immediate further treatment.

Wheat was then drawn from holding silos and the chemical phostoxin was added. The pellets produced the phosgene gas in a separate holding tank, and the eggs and other organisms that I referred to would be eradicated.

After that fumigation, you will see at the top of page 4, the wheat would be turned. This is a continuous process. I would refer you later on at your leisure to review at length the complete decisions of Mr. Justice Osborne at appendix A. He found it to be an intense process, the turning or blending of the wheat to ensure these levels of uniformity in protein and moisture.

We might add that in certain years, because of the growing conditions in Ontario where there is a lot of rain early in the spring, there was also a problem with something called vomitoxin. Vomitoxin is another organism which, as the word indicates, if in high enough levels in wheat, could cause vomiting. Therefore, the federal government, the Department of Agriculture, requires flour millers to submit a program for blending to ensure minimal levels of vomitoxin in years where that particular organism is created because of growing conditions. Silos have to be committed and tanks have to be committed to that separate blending process.

This was the evidence that was before the court in the so-called Nabisco case. It is essential to the companies, as well as to the ultimate customers, that these tanks be used in a manner that is described to carry out all of these functions to ensure that the flours are made to those very exacting specifications with respect to bake rating.

There has been much said about the Nabisco Brands decision. As counsel involved in that case, I feel it necessary at this time, having the flour millers before you, to review for a few moments that particular case. It has been suggested that the Nabisco case created or took advantage of a loophole. It has also been suggested that this decision represents erosion of municipal taxes. I think I have already laid to rest the misconception that the only thing being done in the tanks was putting in some ratsbane.

All of these points, it is our submission, are misinformation. In addition, they are disrespectful to four Supreme Court justices, one in weekly court, Mr. Justice Osborne, and three justices of the Divisional Court, all of whom found that the silos at Reid Milling were properly the subject of exemption. As I said earlier, I would ask you and the members to review appendix A and the reasons of Mr. Justice Osborne.

Mr. Justice Osborne carefully reviewed all of these elements of use in connection to the flour milling process. He also reviewed the long history of many cases dealing with the characterization of various types of structures. I quoted him at page 5 of the brief in coming to the conclusion that these silos should be exempt: "Every part thereof is but an integral part of a whole. These silos are an integral part of the whole, the whole being a milling operation carried on by the applicant. All aspects of the milling operation as defined by the uncontradicted evidence have to be considered. The silos' functions go far beyond mere storage."

10:20

He made a very simple finding of fact at that point: "The ingredient of a manufacturing process, in terms of the extent to which procedures are undertaken with respect to the grain, go far beyond that involved in many cases such as Labatts and Hiram Walker. All reasonable pertinences have to be

considered. To ignore them is to view the application's operation in an unreal and fragmented way."

You have heard much from the representatives of distillers and the brewing industry. Mr. Justice Osborne found in this case that the activities went far beyond the activities in those situations.

I also refer you to appendix B, in which I have included the decision of the Divisional Court. The Divisional Court, after a full day of hearings, completely reconsidered all the facts. Three Supreme Court justices listened to all the facts again and they concluded that Mr. Justice Osborne was correct.

In addition, it is also important to note that both before the Divisional Court, and in the Metals and Alloys case before the Court of Appeal, the notion that if an item is a structure the inquiry is at an end was rejected by the Supreme Court of Ontario. This is a position still being put forward now, in our view, via this legislation, because under the guise of maintaining the status quo, by treating all structures as taxable, we view the Legislature as fulfilling this argument, which has been consistently rejected by the courts.

We believe as well that there is an element of discrimination involved in proposed subsection 2(1). It appears to discriminate fundamentally against manufacturers who must use large vessels or silos to blend materials, to prepare those materials for insertion into the machinery to which they are attached. The wiping out of that integral nature, or that integration principle, discriminates against those manufacturers in the sense that other manufacturers who use an assembly-line form of manufacturing will still see many of their machines and equipment treated as exempt under the so-called policy guideline.

As I have indicated previously in the summary, we are also compelled to point out that under clause 1(k) of the Assessment Act, all machinery and fixtures are real property. All real property under section 3 is to be assessed. The only exemptions from taxation are machinery and equipment used for manufacturing purposes. In fact, in this province, machinery and fixtures of nonmanufacturing entities are not even assessed. That creates discrimination as well between these manufacturers and nonmanufacturers who have none of their items assessed or taxed.

As to the proposal to use informal policy, as discussed on page 7, we note there are several inconsistencies in respect of the brief prepared and presented on November 13. It is suggested on page 20 of that brief that all concrete silos are not assessed and that some of them will continue to be exempted as machinery and equipment by informal policy. Our comment is simply that it is inconceivable how legislation can be brought forward to declare all structures taxable yet declare by informal policy, or as a matter of practice, that certain of them are exempt as machinery and equipment. That is a fundamental inconsistency.

As well, on page 24 of that brief, it is stated that it was never the intention of the Legislature to exempt buildings or structures that are integral to manufacturing processes. Rather, it was the intention of the Legislature to exempt only machinery and equipment from taxation, and the proposed amendment simply clarifies the exemption from taxation.

Our comment is that the staff of the ministry has advised this committee, on the one hand, that not all structures are assessed, at page 20, and yet it intends to continue this practice, notwithstanding the proposed amendment. On the other hand, it advises this committee that it was never the intention of the government to exempt structures. This is a total contradiction.

We have also had the opportunity to review proposed policy statements on page 27 and 28 of that brief. We make the following comments: Many of the facilities listed at pages 27 and 28 of that brief are structures; yet the proposed amendment would clearly see them taxed. Yet by way of informal policy, predicated to a great extent on the issue of use, which is the integration principle the proposed amendment wants to wipe out, the ministry staff would then informally apply the integration test.

You will see on page 9 of the brief the two items we refer to that we excerpted from the ministry's brief. First, "The item itself is the vehicle within which the change or transformation process takes place, regardless of whether the item itself houses or supports any machinery or moving parts--indicating exempt status." Also, "The item possesses a high degree of necessity to the overall or general process from raw material to finished product."

We cannot understand how the ministry proposes on the one hand to wipe out the integration principle in the proposed subsection 2(1) and yet maintain it as a matter of informal policy within a guideline. We are of the view that the purpose, therefore, of subsection 2(1) is to remove the integration test from considerational review by the courts and leave it with nonreviewable practices of assessors in the field.

In conclusion, we do not wish to belabour the obvious that this proposed amendment is flawed and potentially damaging to industry. You have heard much about that in previous submissions. Nabisco Brands and Reid Milling in particular want to indicate to you that it was on the basis of good evidence and the extensive case law, the 35 to 40 years of law that you have heard about, that Reid Milling was declared exempt by four Supreme Court justices. By the way, the matter is still pending in the courts by way of a leave application granted by the Court of Appeal. The Nabisco case represents no shift in the law of this province and there is no alteration required at this time to paragraph 3(17).

In addition, we are extremely concerned about the use of unauthorized policy to clarify law that is not appropriate, particularly where the actual text of the draft policy would appear to be in direct conflict and repugnant to the proposed amendment.

You have seen the draft language. If it is absolutely necessary to have some form of amendment to section 3, you have seen this amendment before. However, it is the view of the Ontario Flour Millers Association and Nabisco Brands that it is simply not necessary. Thank you. I realize I am on a relatively short leash in terms of time.

Mr. Pollock: I agree with a lot of the comments in your brief. A lot of people have the idea that in the storage of grain you just put it in a place, leave it there and there is no problem. You have to keep a regular check on it. When it is for human consumption, it is of great concern to you people to keep a close watch on it.

Mr. Milligan: Yes.

Mr. Pollock: Are the silos in which you store grain sealed so that you can maintain that gas for a certain length of time to get rid of the eggs or whatever you want to call it. Let us face it, it is wheat weevils you are concerned about.

Mr. Milligan: The silos themselves are not sealed. The stocks and pellets create the phosgene gas when they come in contact with air and that causes the chemical reaction. The gas is quite effective and removes any of the organisms or vermin. The wheat weevil or eggs are neutralized and they are gone.

Mr. Pollock: Within what time frame? Within a day?

Mr. Silk: It takes about four days for the gas to totally dissipate--

Mr. Pollock: Therefore, you are feeding that in continuously for four days.

Mr. Silk: No, it is fed in in pellet form.

Mr. Pollock: It takes that long to break down.

Mr. Silk: That is correct.

Mr. Milligan: Take, for example, the grain elevators at the Lakehead. They are simply warehouses to store wheat. Once this wheat is treated with the phostoxin, this very complex blending process goes on. The wheat is measured in terms of protein and moisture to achieve those levels so that when it is actually ground, the flour that is produced will meet the specifications. More than 40 flours can be created depending on the product that is going to be baked. You do not bake bread with the same flour with which you bake a taco chip. It is the bake weighting, the moisture and the protein that come into play. That is why this tremendous amount of silo or tankage in the use of these vessels and the moving of the wheat back and forth between them to get the consistency is necessary. That is absolutely different. There is no comparison at all to a warehouse type of situation at the Lakehead.

10:30

Mr. Pollock: You mentioned moving wheat back and forth. Do you do that often?

Mr. Silk: It is a continuous process. We use mainly Ontario white winter wheat which can vary in protein anywhere from eight per cent to 13 per cent, depending on where it is grown in Ontario. To achieve a homogeneous mix of wheat, it is necessary to blend the wheat constantly so we can ensure a uniform flour to our customers, day in and day out, within a given crop year.

Mr. Milligan: By way of information, when you have an opportunity to review the decision of Mr. Justice Osborne of the Supreme Court, at appendix A, at the bottom of page 604, His Lordship says:

"The operation is substantial. The harvest season triggers the activity to which I have very generally referred. Once wheat has been delivered, and once that wheat has proceeded to the applicant's silos, mixing or turning

occurs on a 24-hours-a-day, five-and-one-half-days-a-week basis, from approximately July, which I gather is the time of the harvest season, until the following May, to use an example relevant to one of the taxation years in issue."

From July to the following May, this is going on 24 hours a day, five and a half days a week, a substantial amount of time.

Mr. Pollock: I did not know that. I knew you had to keep a pretty close watch on it but I did not realize it had to be changed in that process for that long time.

Mr. Chairman: Thank you, Mr. Silk. Mr. Milligan is going to stay for the next presentation, which is from PPG. Mr. Seddon, the manager of the glass division, is joining Mr. Milligan. Please proceed.

PPG CANADA INC.
AND FIBERGLAS CANADA INC.

Mr. Milligan: The second brief has been prepared by two major glass manufacturers in Ontario, PPG Canada Inc. and Fiberglas Canada Inc. It does not address quite the same issues. Obviously the presenters have had the opportunity to hear and read other briefs that have been presented to this committee; we do not intend to go over the same ground.

The glass manufacturers are concerned in that it appears that subsection 2(1) of the bill has the effect of threatening the historical exemption to the tools of the trade of industry. As you have heard before, this province has had on its books for many years an exemption for machinery. In the 1950s, after the John Labatt case, it was expanded to include machinery and equipment as matters of exemption. These various court cases led to a case presented by PPG Canada Inc., which I will refer to in a few moments.

I do not intend to review the history of the case law--that has been adequately reviewed in several of the other briefs presented to you--other than to say that we adopt entirely the view that historically tanks, bins and silos used for storage in the nature of warehousing either raw material or finished product have been treated as taxable in this province and would continue to be treated as taxable without any amendment whatsoever to the present Assessment Act.

At page 2, you will see it is our view that the proposed amendment to paragraph 3(17) does not maintain a status quo but seeks to alter the historical exemption from taxation by treating structures such as tanks, tuns and silos as taxable, although they are integral to manufacturing machinery and equipment or to the process itself.

At page 3, the glass manufacturers wish to address what has been suggested as the notion of tax erosion, which has been given as one of the reasons for bringing forward the proposed amendment. PPG Canada, as one of the presenters of this brief, successfully claimed an exemption in 1984 for six silos that directly fed a float glass tank at its Owen Sound plant. Therefore, it views itself as one of the creators of the alleged loophole that has created erosion. PPG wishes to go on record as rejecting this allegation and asks the committee to consider the following:

The law and cases that were relied upon are some 35 years to 40 years

old and created no immediate concern to the Ministry of Revenue staff during that long period.

Both the PPG decision and the Nabisco Brands decision were commented upon favourably by the highest court in this province, the Court of Appeal, in the midst of rendering a decision that rejected a claim for tax exemption on a structure used as a building.

I draw your attention to appendix B to this brief, which is simply an excerpt from the Metals and Alloys case. At page 79, you will see the reasons of Mr. Justice Arnott for rejecting the Metals and Alloys claim for exemption. He refers to Nabisco Brands on page 78 and then to PPG on page 79. At the middle of the page, Mr. Justice Arnott said this:

"Before turning to two recent cases in the Supreme Court of Canada relied on by the appellant commissioner, I would observe that in each of the foregoing cases the land owner had constructed an 'item' in which something physical happened as a part of the manufacturing process. In some, what happened was mechanical; in some, chemical; in another, electrical. In PPG Industries, the silos were the starting point of a mechanical mixing process leading to the furnace where the finished mixture was melted. I do not suggest that the result in any of those cases was wrong; in each of them the facts were such that it was open to a judge to conclude that the item in question was 'machinery.'"

Rather than creating a loophole as has been alleged, the cases that were argued were argued simply because of inconsistent application of assessment practice in the field. In that particular instance, there was a clear connection between the silos and the float glass tank.

To indicate again, perhaps along the line of Mr. Pollock's questions on the flour mill, these silos and that float glass tank operate 24 hours a day, seven days a week for six and a half years minimum, nonstop, to maintain the consistency of a piece of glass that comes out of that float glass tank. The ribbon is about how wide, Mr. Seddon?

Mr. Seddon: About 144 inches.

Mr. Milligan: It is 144 inches wide. The problem of consistency in the material is enormous. Those silos are being drawn upon every 15 to 20 minutes to batch very carefully weighed raw materials into that float glass tank. In the industry, they actually call it a campaign. It is like a war. They will keep that float glass line running for six and a half years. Then, when the innards of that float glass tank have burned out, they rebuild the entire thing. It is up to those silos to be constantly delivering material for all those years and all those days.

That was the evidence before the Supreme Court of Ontario. It was accepted that these silos were an integral part of the float glass process.

At page 4 of the brief, we suggest, therefore, that the Treasurer (Mr. Nixon) was seriously misinformed when he suggested on the floor of the House that the bill "is designed to correct some situations which were extremely detrimental to municipalities and the taxpayers within them. The inequities that were based on certain court decisions that might have appeared proper, and did appear proper in their own instances, have been expanded through

various appeals until exemptions are being granted that provide serious inroads to the assessment base of the municipalities."

10:40

In the light of those facts, we do not believe that that there was any extension or loophole created and that PPG was properly entitled to have these tools of its trade declared exempt. We suggest that the committee ascertain in its enquiries the source of this misinformation because it is this view that has been used to support the proposed subsection 2(1).

At page 5, PPG and Fibreglas Canada also wish to address the issue of the use of policy statements in a more general way. The flour millers have specifically dealt with the proposed policy statements in the ministry's brief of November 13, 1986. However, this brief wishes to point out that it is a fundamental rule of law that subordinate legislation--these informal policy statements would not enjoy the status of subordinate legislation such as regulations made by the minister--in order to be valid must come within the terms of an empowering statute. It is the view of PPG and Fibreglas Canada that subsection 2(1), which would require all structures to be taxable, is clear and therefore any exception made to it, whether by regulation or by informal policy, would be inconsistent with the expressed intention of that proposed legislation and therefore repugnant and without effect, legal or otherwise.

Even if this policy route were to be pursued, it is the concern of this industry that the use of both written and unstated policy would be inconsistent in the field.

For example, on page 6 there is a very specific example where PPG Canada several years ago had to change its process from a draw process for making glass to a float process at Owen Sound, which happens to be the same plant where these six silos are located. The modifications resulted in a layout at the plant that was far less than optimal. Notwithstanding attempts on the part of the company to persuade local assessors and senior assessors from the ministry's head office in Oshawa of those facts, the company was forced to litigate at the Ontario Municipal Board.

The ministry's view, put forward at that board, was that its policies, written and oral, regarding various types of obsolescence did not apply in the circumstances. The ministry led its evidence through five assessors, four of whom either were or are still employed at the ministry's head office, extending the proceeding to almost four weeks in length. The company was ultimately found to be correct by the board on the essential policy issue and a reduction was awarded. The ministry then threatened further litigation to the Supreme Court of Ontario and the company was forced to concede part of its award to the Ontario Municipal Board to end the costly litigation.

There is simply no confidence at the present time that the ministry will necessarily conduct itself any differently in applying its informal policy, and therefore it is a rather hollow suggestion that it would be effective.

To summarize, in terms of the policy issue, policies that are inconsistent with the clear intention to tax structures evidenced by the amendment cannot, as a matter of law, be effective. The history of the

ministry's field application of policy is one that inspires little or no confidence to industry.

On page 8, we address the economic impact because that is the other item that has been suggested as a rationale for subsection 2(1). The Treasurer has been led to believe that approximately \$2 million per annum is involved in all the various cases relating to paragraph 3(17) and this has been referred to as erosion. We understand this is a figure that is Ontario-wide, and we suggest that this committee in its deliberations inquire of the ministry as to the total amount of municipal and realty taxes paid in this province and relate the \$2 million to that, which has to be in the hundreds of millions, if not billions.

Mr. Sargent: Are you talking PPG?

Mr. Milligan: PPG is in fact about \$50,000 or \$60,000. That is the total amount in taxes involved.

Mr. Sargent: In Owen Sound.

Mr. Milligan: In terms of those silos; in the application that was made in Owen Sound.

Mr. Epp: On an annual basis.

Mr. Milligan: On an annual basis.

Mr. Epp: The Supreme Court cost you \$60,000 to \$100,000 and if you were to win at the Supreme Court, you would have that money back in no time.

Mr. Milligan: The Supreme Court was of the view that on the facts and the clear integration of those silos they should have been exempted a long time ago.

Mr. Chairman: On the other hand, if you do not have to go to court and you do not have to pay taxes, you are quite a bit ahead.

Mr. Epp: That is right.

Mr. Sargent: But if the city of Owen Sound wanted to give them a fixed assessment, could it supersede the province?

Mr. Milligan: Absolutely not. Municipalities have been out of the business of bonusing industry since the 1930s or 1940s. There is no way a municipality can interject itself.

Mr. Sargent: Who says so?

Mr. Milligan: The Municipal Act.

Mr. Sargent: If a municipality wanted to bolster a local industry, it should have some say in it.

Mr. Milligan: That might be a good matter of policy for this committee to discuss.

Mr. Sargent: What is the precedent?

Mr. Lettner: Fixed assessments were taken out about 12 years ago. They gave the right to a municipality to grant a fixed assessment to an industry. It was in the act at one time; it has been deleted.

Mr. Sargent: Suppose an industry is having a rough time; it may leave the city. Are we stuck with what you say?

Mr. Lettner: Not with what I say. Mr. Milligan has already said he does not even agree with our policy manuals, except when they benefit him.

Mr. Sargent: There should be some flexibility for the local municipalities.

Mr. Chairman: Especially when it is Owen Sound.

Mr. Sargent: Go to hell.

Mr. Lettner: A municipality probably has the right under section 496 of the Municipal Act to write off taxes for an industry, for both business and, in the alternative, inability to pay them. Again, that would probably be the subject of litigation if they did not agree. They do not have the right to give a grant to industry or commerce, but under section 496 they have the right to write off taxes for almost any reason.

Mr. McKessock: Write off or write down?

Mr. Lettner: Write off. It is a tax. It is not a write-down under the assessment; it is a write-off of taxes for the year.

Mr. McKessock: Are you saying the taxes would have to be in arrears before that would happen? Can they negotiate with the city and say that because of economic conditions, they feel they should pay only half their taxes and the municipality can say it will go along with that for the year?

Mr. Lettner: I do not know whether they could go along with it, but under section 496, they can give a refund of taxes.

Mr. McKessock: A refund.

Mr. Lettner: That is right, or a write-off. They can write off taxes as being uncollectable. If you pay your taxes and your building is razed by fire, they pay you a refund.

Mr. Sargent: Is it a question of process?

Mr. Milligan: We think it is process. It is the question of use, yes.

In answer to Mr. Epp, the amount of taxes involved in the silos is really de minimis, even in terms of the total taxes paid in Owen Sound, let alone the taxes that are paid, for instance--and that is the point we were trying to make--in terms of the growth of the industrial tax base in Ontario. For instance, within the past seven months PPG Canada opened a new plant in Alliston, which is going to pay hundreds of thousands of dollars in taxes.

Mr. Guindon: Where is this?

Interjection: In Alliston, next door to the Honda plant.

Interjection: I think the chairman was there.

Mr. Chairman: I was there. I have an interest in PPG also.

Mr. Epp: My point was that if a lawyer thinks he is on the side of the angels and the Supreme Court will support them in their litigation case and he will benefit his client by a lot of money, he will pursue the case to the Supreme Court of Canada. On the other hand, if they think the angels will not be on their side and their case will be lost, maybe they will not pursue it.

Mr. Chairman: It depends where the angels are.

Mr. Sargent: Let us nail the towers on these--the Bank of Montreal, the Toronto-Dominion Centre and all the towers. We should nail the banks for it. If they need all that stuff in the process of making money, they should be taxed for it.

Mr. Milligan: The point we are making is simply that if this committee looks at the real tax numbers in terms of the province-wide generation of realty and business taxes from industry and at the growth of the industrial base, it will see that this so-called \$2-million erosion is the result of a few isolated cases where the facts have been clearly demonstrated and have satisfied a number of Supreme Court justices that no such erosion is present and that the economic impact that has been alleged is absolutely insignificant.

We suggest that this committee review the potential impact of any reasonable application of the proposed amendment on individual industry, which not only would cause the silos to be declared taxable structures but would also include other items that have never been considered taxable within its net.

10:50

Within the float glass and glass manufacturing industry, you have those items listed at page 8 of the brief, everything from the silos we have been talking about to water towers, transformers, generators and delivery systems, including the mixers, hoppers and batchers, to the float glass tank itself, including the tank refiners, the bath units, the lehr lines and the conveyors, as well as the cullet collection systems, chutes, choppers, vibrators and belts. These are all structures and they would necessarily become taxable under the proposed wording of subsection 2(1). Experts familiar with the evaluation for assessment purposes of glass plants could see an increase in taxes on an individual plant of some 35 per cent or 40 per cent.

These two industries wish to reiterate their acceptance of the statements of the Treasurer (Mr. Nixon) that (1) this proposed amendment is not a tax grab and (2) the proposed amendment is meant to maintain the status quo. Therefore, they find it difficult to comprehend the present form of the amendment.

On page 10, the recommendations of these glass manufacturers are that the committee report to the Legislature that subsection 2(1) represents an unwarranted alteration of fundamental tax policy that has historically exempted tools of the trade of industry in a manner that is not justified either by closing an alleged loophole or by tax consequences of the few

isolated cases. Therefore, it ought to be withdrawn in its present form from the legislation.

Again, if it is the wish of this Legislature to reinforce the view that structures which are buildings are taxable--although I have to indicate to you that in my view the Court of Appeal has given its decision definitively on that point in Metals and Alloys, that buildings are buildings--again you have before you the proposed language.

We have included in appendix A of our brief the complete reasons of Mr. Justice O'Brien in holding that the six silos at PPG which are directly attached by the conveyors and batching equipment to the float glass tank were to be exempt as integral to the process. I ask the committee to review that decision at its leisure.

In conclusion, we thank you for the opportunity to be heard. Again, we request this committee to seriously consider the withdrawal of proposed subsection 2(1).

Mr. Chairman: Are there any questions? Thank you very much.

Mr. Milligan: Thank you.

Mr. Chairman: The next presentation is from the Toronto Stock Exchange; Richard Poole and Mr. Petrillo. The brief for this one is in your files.

Mr. Epp: I wonder whether we should charge the firm of Walker, Poole and Milligan some extra rent for using this committee room; perhaps we should send them a bill for these hearings.

Mr. Guindon: Maybe we should have them on staff.

Mr. Epp: I do not know if we can afford them or not.

Mr. Chairman: That did happen once. They were.

Mr. Epp: The deficit for Ontario is already large enough.

Mr. Chairman: We will not charge you, Mr. Poole. Please proceed.

TORONTO STOCK EXCHANGE

Mr. Poole: I have me with Len Petrillo, who is the vice-president, general counsel and corporate secretary of the Toronto Stock Exchange. We had hoped that Pearce Bunting, the president of the stock exchange, would have been here, but he is addressing a policy conference involving an analysis of the responsibilities of the Toronto Stock Exchange in the public interest.

We are putting before the committee a submission on behalf of the Toronto Stock Exchange, together with a copy of the report of the standing committee on procedural affairs and agencies, boards and commissions, which reviewed the activities of the stock exchange and reported to the Legislature on January 7, 1986. It was in the course of its procedure of reviewing various boards, agencies and commissions of the province, which included the Toronto Stock Exchange at page 54 of that report.

I will try to be as brief as possible, having regard to the time. The

submission is twofold in its presentation. The first is an analysis of the activities and role of the Toronto Stock Exchange within the capital markets of the province. The stock exchange is of the view that there may well be a misconception of its role in the capital markets of the province and has formed the opinion that the proposal in Bill 131 to assess the Toronto Stock Exchange for business tax perhaps results to a certain extent from that misconception.

I say that for two reasons. First, the Toronto Stock Exchange, by the incorporating statute--and it is created by a special act of the Ontario Legislature--is primarily a regulatory authority. It is a regulatory authority under the auspices of the standing committee on procedural affairs--

Mr. Sargent: It is not a bucket shop.

Mr. Poole: It is not a bucket shop.

In the course of its responsibilities and duties, it is to regulate the trade of securities in Ontario for the public interest. Ironically, as we go through this report, at page 6 it can be seen that it is a nonprofit organization in that it is not entitled to make a profit. However, in addition, as was reported by the procedural affairs committee, the members of the stock exchange cannot belong to the exchange as a means of making money through the exchange's operations. Therefore, it is nonprofit for its own benefit and its own account, but it is also nonprofit in that it cannot carry on its functions with a view to a purpose of profit or gain for its members.

I address to the committee the view that under the jurisprudence of the Supreme Court of Canada in the Caisse populaire de Hearst case, it is clearly a nonprofit organization. Also it may well be, under the historical commercial activity test of the Windsor-Essex County Real Estate Board case, it is not a commercial activity in that its primary function is that of a regulatory authority. That leads to the conclusion that the stock exchange is proposing, at page 8, that perhaps the Legislature should reconsider the application of a business tax to the Toronto Stock Exchange.

In my view, there is sound logic to that proposition, but as in all circumstances involving the acts of the Legislature in taxation, there is obviously a political question as to whether it is the view of the Legislature, in spite of the regulatory functions of the Toronto Stock Exchange, that for reasons of being integral to the capitalist system in creating this trading facility, it might still be considered liable for business tax.

That leads to the second portion of the presentation, at page 9, and the concern of the Toronto Stock Exchange that the intent of Bill 131 in maintaining the status quo is not being carried forward. Over the years, the Toronto Stock Exchange, primarily when it occupied its old premises on Bay Street, did pay a business tax. It paid a business tax on those premises virtually from the time business taxes were incorporated into the Assessment Act. However, the rating applied to the Toronto Stock Exchange for all those years was a 50 per cent business assessment rating. It is the proposal in Bill 131 that the rating be adjusted from the historical 50 per cent rating to a 75 per cent business assessment rating as a financial business.

We have concerns with respect to that proposal if it is the political will of the Legislature and of this committee that the Toronto Stock Exchange be subject to business tax. We are concerned that the alteration to a 75 per

cent business tax from the historical 50 per cent represents a tax grab and an additional levy of taxes beyond the maintenance of the historical situation.

11:00

Mr. Sargent: Fifty per cent of what?

Mr. Petrillo: Fifty per cent of the realty tax. Under section 4 of the bill, the ratings of different types of commercial activities are categorized. The category in which it is proposed that the Toronto Stock Exchange be assessed by this legislation is at a 75 per cent surcharge to its realty tax on the basis of the fact that it is a financial business.

Historically, the Toronto Stock Exchange has been assessed at a 50 per cent business tax rating on the assumption that if it is a business, which it may or may not be, it is for the benefit of its members, the brokers and agents who deal on the exchange market, and those members are assessed at 50 per cent themselves.

We come before the committee with respect to this question on two bases. First, if it is the intent to restore the jurisprudence to prior to the credit union case, and if it is the intent to assess the Toronto Stock Exchange, irrespective of its regulatory function, then surely it should be assessed as it had been assessed prior to that decision of the Supreme Court of Canada, namely, at 50 per cent.

Second, as we turn to page 12 of the brief, the rationale for the business tax suggested in the explanatory notes of Bill 131 is that for some reason the Toronto Stock Exchange is perceived as being in existence to "promote the interests and profits of" its members. That is the explanatory note giving rise to the proposed amendment to include stock and commodity exchanges.

If in fact that is the intent set out in the explanatory notes, then it follows that if it is a business activity within the meaning of the Assessment Act, it is an activity to promote the interests and profits of its members and surely should attract the assessment of its members, namely, 50 per cent of the real property assessment, as we set forth in pages 12 and 13 of the brief.

There has been a suggestion that there is neither rhyme nor reason to the different ratings under section 7 of the Assessment Act. I suggest that while the actual ratings may not have too much sense, the rationale behind the placing of a certain activity into a rating has always been based on common sense.

In other words, placing a manufacturer at 60 per cent is based on his activities as a manufacturer and placing a lawyer at 50 per cent is based on his activities as a lawyer; so there should be, and there is, a coherent scheme within section 7 of different ratings applied to different types of activity.

If a rating is to be applied to the Toronto Stock Exchange, the logical activity that triggers the rating is the trading of securities for the promotion of the interest and benefit of its members and the business activity then is that of its members.

I can advise that with respect to the proceedings the stock exchange has embarked upon with respect to the claim for exemption following the recent

court cases, the position of the Minister of Revenue (Mr. Nixon) in part is that it is the business of its members and should be liable for tax whether or not this amendment is put in. If it is liable for tax as the business of its members, then surely it should be liable at the rate of its members.

I draw to the committee these two interrelated aspects on behalf of the Toronto Stock Exchange. First, the stock exchange being primarily a regulatory authority, there is some question of whether it is carrying on any type of business activity. Second, being a regulatory authority, if it is to be assessed none the less because it is the will of the Legislature, the province and this committee that it should be assessed, then surely it should be assessed as it was historically and in accordance with the activities of its members.

Those are my submissions. If there are any questions, I will be pleased to answer them.

Mr. Sargent: I always figured the stock exchange was the biggest crap game in the world. It is unbelievable. This is almost a crap game or a gambling joint. What is your rate there? What do you charge as a percentage of sales?

Mr. Petrillo: The charge is to the member and is based upon the value and the volume of a particular transaction. It is one 10th of one per cent on the value of a contract.

Mr. Sargent: In a boom week, what would be your take?

Mr. Petrillo: The fees the Toronto Stock Exchange charges are based on fees to its members for trading transactions and fees to the listed companies for the opportunity to list on the exchange. The fees we charge to the members for trading privileges in a week--in the past year we have had a record year in terms of volume--would be about \$40,000 or \$50,000 gross per week.

Mr. Sargent: It is nothing other than a poker game. The house takes so much rake for each pot. What happens to that money?

Mr. Petrillo: That money is used for the furtherance of its regulatory functions.

Mr. Sargent: Come on. The members of the stock exchange share in none of that profit?

Mr. Petrillo: The members of the stock exchange are prevented by law and by the constraining statute of the Toronto Stock Exchange from participating in those fees.

Mr. Sargent: The fund that is set up is to perpetuate a place where they can set up a gambling operation?

Mr. Petrillo: The fees that are charged are utilized in administering the performance of the stock exchange responsibilities, one of which is to maintain the trading floor where buyers and sellers, through their agents, can exchange shares.

Mr. Sargent: It does facilitate the gambling process.

Mr. Petrillo: I would not categorize the exchange of shares on the Toronto Stock Exchange as a gambling process.

Mr. Sargent: I do not know; I am not smart enough to know that. What tax do you pay on the accrual? What happens to the millions of dollars that accrue as the rake? What happens to that money? Do you spread that among the members?

Mr. Petrillo: No. As I say, the exchange is absolutely prohibited from spreading to its members any income it receives. It is a not-for-profit organization and, accordingly, is prevented by law from doing as you suggest, spreading that income back to its members. The income is used strictly for the administration of stock exchange business, which is to maintain the trading floor and to maintain its regulatory function.

Mr. Sargent: What is it going to cost me to buy a seat on the exchange?

Mr. Petrillo: The current market for seats on the Toronto Stock Exchange is about \$55,000.

Mr. Sargent: To buy a seat on the exchange.

Mr. Petrillo: That is right. The seat must be purchased from an existing member. That compares with a seat on the New York Stock Exchange which trades at about \$580,000.

Mr. Sargent: Being a member of the stock exchange, you are one of the insiders.

Mr. Petrillo: A member of the Toronto Stock Exchange, yes; an insider as defined by the Ontario Securities Commission, no.

Mr. Sargent: No, but that use of the term "insider" is in quotes. It may eventually come to the same thing as we read is happening in the US stock exchanges now. It is creating chaos down there and is corrupt as hell. You are coming to us saying that the place of operation of a man who can afford to pay \$55,000 for a membership in that club, where he stands to make millions of dollars, should not be taxed?

Mr. Petrillo: I am not suggesting that at all. The members of the Toronto Stock Exchange who carry on business are taxed at the business tax rate of 50 per cent. I suggest that the place where the exchange of shares takes place and where the regulatory function which has been delegated to us by the Ontario Securities Commission and this legislation should not be taxed. If it is to be taxed, it should be taxed at a 50 per cent rate as opposed to the proposed 75 per cent rate.

11:10

Mr. Sargent: That is pretty chintzy, would you not say? The wealthiest group in the country wants a 25 per cent reduction in fees. You are saying the wealthiest level of our economy wants 25 per cent off because it cannot afford it. That is bullshit.

Mr. Poole: From Mr. Sargent's comments, you can see the problems relating to the activities of the exchange. If it is a gambling hall or a casino, you can imagine what the stock market would be like if you did not

have the Toronto Stock Exchange. If shares could be traded in the corner store as they used to be traded in England, without regulation, without rules of the game, without proper financial disclosure necessary to list and without appropriate audit of all its members by the exchange to prevent frauds and misrepresentations, you would have a free-wheeling market completely out of control.

The purpose of the Toronto Stock Exchange is to keep that gambling casino, as you call it, under control. With respect, that is why the Toronto Stock Exchange is here, to put to the committee the real activities of the exchange as opposed to the misconception that it is there for its members. It is not there for its members. It is there for the public interest. If you were to canvass certain of the members of the TSE, they would probably much prefer to have a free-wheeling, uncontrolled system rather than the system that the Legislature of Ontario has seen fit to create by the Toronto Stock Exchange Act. The presenters are here to advise the committee that it is not there to facilitate the making of profits by its members. It is there to protect the public interest and to make sure those who might practise inappropriate procedures are disciplined, brought under control and prevented from trading.

Mr. Sargent: How much money are we talking about here?

Mr. Lettner: I do not know.

Mr. Poole: At present, the TSE pays approximately \$1 million a year in municipal taxes.

Mr. Sargent: You want a 25 per cent reduction.

Mr. Poole: It would be about only 10 per cent overall because I am talking about realty and business tax. The realty and business tax for the TSE currently is about \$1 million a year. If the legislation were to maintain the status quo, it would continue to be \$1 million a year.

Mr. Sargent: You are going to assess your members. It is going to cost you more money, so you assess your members a higher fee.

Mr. Petrillo: Possibly, yes.

Mr. Sargent: Why do you not do that?

Mr. Lane: I have listened to the presentation. It seems you are saying either/or; either do not tax it or do not tax it beyond what the status quo has been.

Mr. Poole: That is correct.

Mr. Lane: In the first instance, it is wishful thinking. You hope we would not tax it, but if we are going to, then the expectation is it will not be beyond what it was before.

Mr. Poole: That is correct. The reason for presenting the analysis of the role of the exchange is to show the committee what it is actually doing. For political reasons, it may be appropriate to assess the TSE for business tax. That is not what we are here to address before this committee.

In the light of some of the comments made by members of the committee, we wanted to draw to your attention what the main activities of the exchange

are. It is a self-regulatory and self-funding authority. It would be interesting to know whether the government itself would see fit to fund such an authority in the same way it funds the Ontario Securities Commission.

In addition, there is concern that the legislation be put forward as intended by the Treasurer (Mr. Nixon) to maintain the status quo and to restore what was there before. If you want to talk about a real gambling operation, horse racing is far more of a gambling operation than a securities exchange. The Ontario Jockey Club is being proposed a 30 per cent business assessment rating because historically it was a 30 per cent business assessment rating. That is what I wanted to raise.

Mr. Lane: That answers my question. I thought that was what you were saying to us, but I wanted to be sure. Thank you.

Mr. Epp: I had another point I was going to raise, but I am going to leave it for now. There is a difference between the racetracks and the stock exchange. Racetracks operate a very small portion of the year as opposed to the stock exchange, which operates 250 to 300 days a year.

Mr. Poole: I am not saying the stock exchange should be 30 per cent. We know that under section 7 of the Corporations Tax Act the amount of time a business operates is irrelevant. If it is in business for any portion of the year, it is assessed. I drew that to the attention of Mr. Lane. It is coming back in at 30 per cent because it was at 30 per cent. We are suggesting that if we come back in, it should be at 50 per cent, because we were at 50 per cent. That makes a lot of sense, having regard to this interrelationship between the members and the exchange.

Mr. Chairman: Thank you very much, gentlemen.

The next presentation is from the steel industry. Mr. Beatty, taxation manager at Dofasco Inc., has several people with him. Mr. Beatty, you might introduce your group. Please be seated so your voices can be picked up. Please proceed.

ALGOMA STEEL CORP.
DOFASCO INC.
STELCO INC.

Mr. Beatty: Good morning. I would like first to introduce the group, give you a bit of preamble and then get into the submission.

The group this morning represents members or, if you wish, employees of the Algoma Steel Corp., Sault Ste. Marie, represented by Alphonse Nardi; Dofasco Inc., Don Gerrard and myself, Will Beatty, and Stelco Inc., Ray Schroeder and Al Wade.

We are responsible for municipal tax compliance for our respective employers. We are not lawyers nor consultants, but rather a group of individuals experienced in the day-to-day administration in compliance with municipal tax legislation. The submission we are presenting this morning has been prepared by our group, as a group, with whatever in-house expertise we felt was required. We appreciate the opportunity to appear before you as part of the overall consultative process in addressing this amendment.

We would prefer to read through our submission. Upon completion, we will respond to any questions the committee may have and welcome the opportunity to

invite some discussion. However, if you would prefer, we will read it through and members can raise whatever questions come to mind as we do so. What is the preference of the committee?

Mr. Chairman: You can read through it. If you decide to skip a little bit, we will not argue.

Mr. Beatty: As an introduction to the Ontario steel industry, our annual reports, quarterly reports and selected steel industry data, appendix A, indicate the steel industry is very capital intensive. The industry is a large employer in Ontario and will pay approximately \$55 million in property tax in 1986. We represent a well-established industry in this province and intend to continue operations here. However, we must be competitive.

Government leaders must recognize current economic conditions facing Ontario's steel producers and they must be cognizant of the competitive environment existing in today's world steel trade.

It is evident that excess steel production capacity exists in North America and, indeed, in the world at this time. Strong competition from lower-cost offshore producers has resulted in significant penetration in Canadian and American markets. Protectionist sentiment is continually on the rise in the United States. Discussions on freer trade have created confusion rather than solutions.

11:20

This current environment makes it essential for Ontario's steel producers to minimize costs. Little potential for price increases exists at this time. Product quality demands by customers are ever rising. Cost reduction and productivity improvements are the industry's only real alternatives, once again, at this time.

Additional, unexpected increases in property taxes detract from the industry's aim to achieve significant cost reduction. Additional and unexpected increases in property tax decrease net cash flow, thereby reducing funds available for new facilities and technology which are essential to achieve productivity and product quality advances.

We hope members of the Legislature will have a better understanding of the industry's competitive environment at this time and a keener awareness of the impact of increased costs. The long-term health of the industry, together with its ability to maintain stable employment levels and adequate investment activities in Ontario, are at stake.

Our intent this morning is not to pursue the definition of business as proposed in Bill 131, as we feel this has been adequately covered with other concerned groups. We wish to discuss the ramification of paragraph 3(17) and the new wording with respect to the tax status of integrated machinery and equipment. Bill 131 proposes to amend paragraph 3(17) of the Assessment Act by adding thereto the following clause--I am sure you are all familiar with that.

The term "structure" is not defined in the statute; therefore, we must turn to the ordinary meaning of the word--and I will skip some of that. Although there may be no intention to assess these structures today, the proposed clause could, in view of the above definition, be interpreted by

future municipal and assessing administrations to expand the assessment base beyond the original intent of Bill 131.

We believe the proposed legislation is a result of a court decision, which we also believe is under appeal today and therefore yet to be resolved. We understand that Mr. Nixon is simply attempting to see that assessments in the municipalities where these structures are located are not needlessly reduced in these special circumstances. He is not initiating a change to increase the assessment base but rather a change to maintain the status quo.

We are very seriously concerned with the method the ministry is proposing to accomplish these goals. The proposed amendment would make many of our existing exempt items assessable, such as coke oven batteries, blast furnaces, pipe racks, mezzanines for equipment access, craneways and structural steel in buildings for crane support, soaking pits, filtration pits, outside cranes and ore bridges. That is by no means an all-inclusive list.

For example, we cite the cases of a battery of coke ovens and a basic blast furnace. In the steel industry, coke ovens are used to bake coal at high temperatures until the coal has been turned into coke. Each oven in a battery is about one and a half feet wide, approximately 40 feet long and about 15 to 20 feet in height. A battery may consist of 40 to 45 ovens in a row.

Beneath the coke ovens is an area called a basement, which forms the foundation for the ovens and also provides access for servicing and operating the ovens. On top of the ovens is equipment, supported by structural steel, used to charge or load the ovens and other equipment on the side to push or empty the ovens.

A modern-day blast furnace is a cylindrical steel vessel which may reach 300 feet in height. It has a hearth diameter of 30 feet or more and an ultimate capacity of 5,500 metric tons of molten iron per day. It combines iron ore pellets, coke from the coke ovens and limestone to make iron. A blast furnace may be charged or loaded by either a skip hoist or by a conveyor. Both charging methods require supporting structural steel, as does much of the other equipment used in the operation of the furnace.

In both cases, the coke oven battery and the blast furnace are free-standing structures which clearly are an integral part of the steelmaking process and have always been treated as machinery and equipment. We do not believe it is the minister's intention to make such equipment assessable.

We also cite craneways and structural steel used in buildings for crane support. While it is not unusual for the greater percentage of structural steel in a building to be solely for the support and operation of process equipment, our fear is that it will become taxable as part of the building, going back to the proposed amendment, "notwithstanding that it forms an integral part of manufacturing."

The suggested legislation goes beyond the specific intent of the ministry. We do not believe the intent or the spirit of the legislation would override the legislation as written. The mere fact that the ministry intends to issue new policy directives once the proposed legislation becomes law is indicative that the amendment under discussion is vague and could result in inconsistent application.

Policy guidelines for the determination of assessable or nonassessable items used in manufacturing would not override the proposed legislation. Thus, the courts would be forced to interpret the legislation as written, i.e., follow the letter of the law regardless of the intended impact. We have attached appendix B, which is an example in the area of federal income tax where the courts were forced to address the letter of the law as opposed to the intent.

Costly and time-consuming court appearances over potential future differences in interpretation are undesirable when more specific wording of the legislation, to present more accurately the ministry's intention, could be redrafted today. We respectfully submit the following as an alternative amendment:

"The exemption from taxation under this paragraph does not apply to a building or a structure or any part of a building or structure which is a tank, silo, bin or similar type of structure used for storage of material, such material not being processed within the structure."

The challenge to the drafter of the legislation is, ideally, to write legislation that is a reflection of the intent or purpose of the law. It is imperative that it be simple and concise and not inadvertently penalize the innocent or, in this case, those taxpayers beyond the scope of the intent or purpose of the law. It is a real challenge, but not impossible or unique to property tax in Ontario.

In addition, the federal government is proposing significant tax reform in the areas of income tax, both corporate and personal, as well as changes to or replacement of the existing sales tax. Our industry would prefer some stability, wherever possible, in the overall business activities of our respective endeavours, e.g., markets, labour and government.

Now is not the time, in our opinion, nor is it necessary to introduce additional uncertainty in the business activities of Ontario manufacturers and, in particular, the sector which we represent. We therefore agree that the status quo should be maintained.

In summary, we would like to thank you for your attentiveness. We would now welcome any questions, to which we hope we can reply.

I would like to zero in on appendix A. It gives some idea of the property tax we have paid or are expecting to pay, last year versus this year. Regardless of the amendment, it is a seven per cent increase. By coincidence, our Ontario level has decreased by seven per cent, 1986 versus 1985. We have estimated capital expenditures over the next several years up to and including 1990-91 of some \$3 billion. Is now the time to change the rules? We are committed.

If there are any questions, I will try to reply and I am sure these fellows will as well.

Mr. Sargent: I appreciate this brief. I have done a lot of reading about the corporate steel problems in the United States and I think this is a time when we have to tread softly. The experience today is not good. The job of governments everywhere is to protect the industries that generate jobs. We have a great need for stability in the steel industry. What is the trend in the steel industry? Are we on the same level of taxation as the industry in the United States in taxing steel?

11:30

Mr. Lettner: I do not know about taxing steel, but we are lower in our assessment of buildings and structures in Canada than in the United States. Many states tax machinery and equipment.

Mr. Beatty: Unfortunately, I cannot agree or disagree, but if you look at the relative rate of taxing real property in Ontario versus the various states, you also have to look at the sales tax in those applicable jurisdictions. I do not think you can make that comparison in isolation.

Mr. Lettner: I was not making a comparison. I am not that familiar with it, but a number of states do tax machinery and equipment. I understand Alberta taxes rolling stock and so on in mines.

Mr. Beatty: To counter that, Alberta as a province has no provincial sales tax. I believe its provincial income tax is the lowest in Canada.

Mr. Lettner: I thought we were talking of assessment and taxation of buildings and structures. I see Mr. Milligan shaking his head. We are not talking here of corporation tax or sales tax. We are talking, under the Assessment Act, about the assessment of buildings. None of the things you have listed here is now taxed in the steel industry.

Mr. Beatty: I agree, and I believe we said as a lead into that list that they are not currently assessable. Our concern is that under the proposed legislation they could become assessable.

Mr. Lettner: This is a basic disagreement we have had for three and a half days now. The policy manual that has been referred to by nearly everyone who comes here was put out in 1985. It was to put the policies of the assessment program in front of anyone and everyone across the province. It was an open book, intended to make the job of the assessor easier and consistent. However, most of the policies in there are in municipalities we have reassessed under section 63.

We were talking this morning about functional obsolescence. Some of those policies do not apply where there is an old system in effect, but the policy manual has been used by you people and it is being used by us, so that you know where we stand and we know where you stand. Everyone seems to downgrade the policy manual. I think the policy manual is a valuable tool, both to the assessor and to the industry. That is all I want to say.

Mr. Gerrard: I do not believe our intent was to downgrade the policy manual. We are simply making the point that if it can be said in the policy manual, can we then say it in law to save that interpretation?

Mr. Guindon: My question has to do with the appendix. Can you tell us what the percentage was, or roughly, what the profits were for 1985-86? Was there a change in profits between 1985 and 1986?

Mr. Beatty: I have a summary here that would help, and you can build the numbers up yourself. This is an analysis of the three mills for the nine months ended 1985-86 and for the three months ended 1985-86. Dofasco's income before tax for nine months has gone from \$140 million in 1985 to approximately \$100 million in 1986. As well, sales volume has declined nominally. For Stelco, the comparable figures would be: net income, approximately the same,

\$54 million in 1985 and \$56 million in 1986. For our friends from Sault Ste. Marie, it goes from a loss of some \$6 million in 1985 to \$130 million in 1986.

Mr. Chairman: We have the annual report of the three companies here, which can be given to those interested later, but you have been given the profit figures.

Mr. Guindon: Do you expect 1987 to get better or will it stay the same?

Mr. Beatty: I do not know, and this is part of the problem. Because of so much uncertainty, it is very difficult for people specializing in the area of cash and income projections to address the issue. This year we have had revisions to the Ontario mining tax. There is massive federal tax reform on the horizon, and now we are attempting to address some of the potential uncertainty pertaining to municipal tax in the province of Ontario. If you would look at the quarterly, and I have it, you might get some indication as to what the feeling is for the balance of this year and possibly early next year.

Mr. Guindon: What are you doing to stay competitive, which was h the last line in the first paragraph?

Mr. Beatty: We are in the midst of the largest single expansion expenditure in our company's history. We are building a cast slabber, not so much to increase steel volume, but to increase the quality of steel produced. It is a quality item. Our customers are demanding better and better quality. I believe at Stelco, they are doing much the same thing. Algoma is in a little different position than ourselves in southern Ontario.

Mr. Nardi: Algoma has an approximately \$400-million new tube mill coming into production soon. Unfortunately, there is a limited demand for the oil countries' tubular products at this point, because of the slump in world oil prices, along with the problem of having one brand new tube mill and one older tube mill, with limited demand for the product currently and in the near future. We are undergoing a program of action which incorporates some downsizing, getting us out of certain operations, primarily ingot operations. We are dedicating most of our production to the slab caster's more productive facilities. We are in an unusual situation, since our product lines and product mix are currently in a depressed state and projections for the next year or so are not totally optimistic.

Mr. Beatty: In addition, we operate two iron ore mines in Ontario and we have just initiated what we call a flux pellet. The other alternative is to purchase these from Quebec sources. We hope this flux pellet produced in Ontario will give us a better quality of iron. We are in the midst of educating virtually all the employees, some 10,000 or 12,000, in better quality control. They are coming in from all areas of the plant weekly to take this sort of session or seminar on quality, because that is what our customers want.

Mr. Sargent: I want to underline the fact that this industry is so very important to our economy. I am concerned about something in the fourth paragraph, page 3: "In both cases, a coke oven battery and the glass furnace are free-standing structures, which clearly are an integral part of the steelmaking process and have always been treated as machinery and equipment. We do not believe it is the minister's intention to make equipment such as this assessable."

Yet the overriding theme of this week has been silos, even though they are part of the process. I am wondering whether it is the minister's intention to make this equipment, which is free-standing, assessable?

11:40

Mr. Lettner: No. It is looked upon as machinery in the foundations. It is exempted now and it will be exempted after the amendments.

Mr. Epp: There is absolutely no intention on behalf of the ministry to add anything to the assessment that was not there before.

Mr. Sargent: I see.

Finally, you state: "The suggested legislation goes beyond the specific intent of the ministry. We do not believe that the intent or spirit of the legislation would override the legislation as written. The mere fact that the ministry intends to issue new policy directives--" Is that what you are concerned about?

Mr. Gerrard: That is one of our concerns.

Mr. Sargent: As one member of this committee, I think it is paramount that we get a message--if you agree, Mr. Epp--to the Treasurer (Mr. Nixon) that protection is very important in this area.

Mr. Chairman: Thank you. We will be doing clause-by-clause of the bill next week and will take the points you raised into consideration.

Mr. Beatty: I have one other comment. Is the uncertainty significant to you people?

Mr. Chairman: Having thought through most of presentations that have been made, I might say that a lot of them are along the lines you have mentioned. There is some concern that the ministry may be trying to cast a net that is not there at present. Therefore, your concern is well founded. It is encouraging that the ministry has said it is not its intention to catch you. Being a three-party committee, we will probably be quite insistent that the ministry not catch you in one or two parties, with Mr. Sargent's assistance.

Mr. Beatty: It was more the timing, just prior to this potential federal tax reform, and the additional uncertainty.

Mr. Chairman: The next submission this morning is from Mr. Smith, the executive director of Fair Havens Bible Conference.

FAIR HAVENS BIBLE CONFERENCE

Mr. Smith: I would like to take the privilege of reading my submission to you and then allow you to ask any questions you may have relative to the concerns I expressed.

I am sure I am expressing a concern not only of the organization and the agency I represent, but also I like to think I am talking relative to all eleemosynary institutions in Ontario.

First and foremost, I want to express my appreciation to each one of you for this opportunity to appear. It is only in a free and democratic society that such a privilege is possible. For this, not only I but also everybody in this room is grateful that we can all be heard prior to the issuing of a bill.

Mr. Chairman: Excuse me. We have a vote coming up in the House. Perhaps we can agree that one member from each party will stay and complete Mr. Smith's presentation if the others want to go for the vote on the private members' public business. Please proceed.

Mr. Smith: My appearance before you this morning is not because I have a cause to champion, an axe to grind, or because I believe the Honourable Robert Nixon, the Minister of Revenue, has a bone to pick with nonprofit corporations in the introduction of Bill 131. I am here because I firmly believe that if this bill were adopted as written, it would have far-reaching implications beyond those which the honourable member envisions.

The explanatory notes accompanying the bill indicate one of its four purposes; that is, "(a) to provide that nonprofit"--and the word "nonprofit" is in italics by my typing--"corporations that engage in commercial activities in competition with business corporations or promote interests and profits of their members are liable for business tax."

No one knows the exact number of nonprofit organizations and agencies within Ontario, let alone across this great dominion of ours. No doubt there are hundreds of thousands. Almost every Canadian belongs to or works in or with numerous such organizations during his lifetime. The vast majority of these organizations serve worthy purposes, despite abuses by some organizations. All in all, the impact of the nonprofit organization on Ontario's society has been and continues to be tremendously valuable and admirable.

Membership in nonprofit organizations in Canada is enormous. By way of illustration, a few simple figures are stated here: 236 national religious bodies have more than 13 million adherents. The Royal Canadian Legion, with posts in almost every city in Ontario, has 250,000 members, plus another 250,000 in the auxiliary. The Canadian Automobile Association, again with branches in almost all cities, has upwards of 750,000 members. The Masonic order's many branches boast thousands of adherents and members. Added to the above are the numerous fraternity members and individuals who are members of the legal, medical, engineering, public accounting, real estate, education and theological societies and associations.

The enrolment in Ontario's colleges and universities of almost 750,000 students, not to mention the thousands of members in labour unions, bespeaks the impact of the nonprofit organization within our society. The Ontario population possesses a propensity towards community action that knows no counterpart outside the North American continent.

The yellow pages of any city's telephone directory reveal an astonishing variety of listings under classification headings that indicate nonprofit or charitable character--associations, clubs, fraternal orders, labour unions, schools, colleges, churches, charities and chambers of commerce, to mention a few. The great number of such organizations, especially in major centres such as Toronto, Hamilton, Ottawa and London, is almost unbelievable. Add the government organizations to these, and the number is overwhelming.

Modern society has long consisted, to an extraordinary extent, of voluntary associations of persons and organizations not for profit but for the public good. No other country in the world approaches Canada and the United States in the number and activities of nonprofit organizations. These organizations are based on the characteristic Canadian tendency to form groups voluntarily for the accomplishment of social, religious, educational, fraternal, economic and other purposes. Canadian, and more specifically, Ontarian nonprofit organizations are a significant asset to our society, despite some disturbing abuses among them.

Some words, when used in nonprofit organization terminology, are distinguished to a greater extent than is true of their use in other matters. For example, the words "nonprofit" and "charitable" seem to mean much the same thing to most people, but they are often quite distinctly different in nonprofit organizational law. In common use, the word "nonprofit" is defined in a standard dictionary as an adjective meaning "not intending or intended to earn a profit, such as a nonprofit corporation." "Charitable," defined as "of and for charity," is described in another instance as "a welfare institution, organization or fund."

11:50

"Philanthropic" is defined as an adjective meaning "showing or constituting philanthropy; charitable, benevolent, humane...it implies interest in the general human welfare, especially as shown in large-scale gifts to charities, the endowment of institutions for human advancement... 'charitable' implies the giving of money or other help to those in need; 'altruistic' implies putting the welfare of others before one's own interest and therefore stresses freedom from selfishness."

A nonprofit corporation is not necessarily a charitable corporation, but a charitable corporation is necessarily a nonprofit corporation. The word "nonprofit," as compared with "charitable," becomes clearer if we amplify the word into the term "merely nonprofit." In other words, the word "nonprofit" is a general term, whereas "charitable" is a specific term. An organization that is "merely nonprofit" is not a charitable organization. This distinction is not a mere play on words; it is an expression of a fundamental and highly important distinction drawn by law.

The quest for profit is the chief motivation factor in our society, especially in commerce and industry. Our economic system has grown out of its search for pecuniary gain. Our social system too is strongly affected by the human impulse to obtain advantages in the sense that respect and the deference of other people are advantageous to one who wins the esteem of his fellows. However, profit-seeking never has been the only determinant of the development of western society, though the propagandists of communism would like to have us think so.

Parallel with the profit motive in the development of our civilization down through the ages has been another great tendency which is exactly the opposite of the desire for personal gain. That is the tendency compounded of all motives that are called nonprofit. These motives include the nobler human impulses: religious and moral concepts and principles; tenderness towards children; resentment of injustice and oppression; and the desire to help the needy. In the words of the greatest teacher who ever lived, we read, "In as much as ye have done it unto one of the least of these my brethren, you have done it unto me." Those are the words of Jesus Christ.

A nonprofit organization is one that is not used for the personal financial enrichment of any of its members or managers, and no portion of its money or property is permitted to inure to the benefit of the private individual.

Financial gain accruing to the organization from its operation, however, does not make it a profit or business organization if such gain is devoted to its maintenance and improvement. Profit means gain from a transaction or operation. More precisely, it means the excess of income over expenditures in an enterprise during a given period. In a corporation, the test of whether it is nonprofit is whether dividends or other pecuniary "divvy-up" benefits are paid to its members.

Motive is the acid test of the right to nonprofit status. When altruistic, ethical, moral or social motives are clearly dominant ones in an enterprise, that enterprise is nonprofit. Obviously, it is difficult to test human motives in an enterprise. Abuse of nonprofit status, however, is often best tested by testing the motives of the organizers or officers of the nonprofit corporation.

The status of nonprofit enterprises and organizations is very definitely a privileged one in our society. In recognition of services rendered to us without profit, our nation, our province and our community reciprocate by granting various benefits.

Chief among the privileges flowing from nonprofit and especially charitable status is freedom from most burdens of taxation. The federal government has extended the privilege of exemption from income tax, the provincial government has to some extent extended exemption from real property and business tax--exemptions that are immeasurably beneficial, not to the corporation concerned but to the recipient of the respective organizations and agencies.

What confronts us today, and more particularly you ladies and gentlemen who are sitting on this committee, is a bill that would lump all eleemosynary institutions into one category, to wit: nonprofit corporations. Bill 131 must, before it comes out of this committee, differentiate between a charitable organization and a nonprofit organization; there is a distinct difference.

Further, the decision you make must assure your constituents and the people of Ontario in general that the organizations to be taxed, if any, have allowed their profits to inure to the benefit of any one person or group of people, for it is only at that juncture have you stripped away the façade, thereby revealing the true characteristics of the alleged nonprofit corporation.

At this point, I wish I could conclude this presentation, but unfortunately there is an additional point that must be touched upon. Again, I quote from the first purpose given for the bill--and I will only touch upon that which I have placed in italics, and that is the word "competition"--"engaged in commercial activities in competition with business corporations."

I am surprised that Ontario finds itself in the role of having to protect commercial or trading companies from alleged competition by nonprofit organizations and agencies. During the past quarter of a century that I have served nonprofit corporations, I have never once encountered hostility from the private sector. Just the opposite is true.

I have observed a steady transition in the attitude of corporate management from one of more or less exclusive preoccupation with self-interest to one of self-interest tempered with a broadening sense of social consciousness. That cannot be more evident than with what is being done in the area of the united fund. We have reached a stage in the evolution of corporate enterprise and the development philanthropy where the two are meeting in happy union. The commercial corporation has become a philanthropic force in the sheer bulk of its contributions.

On the basis of the present tax policy, it seems reasonable to believe that an annual flow of millions of dollars from corporate sources into philanthropic activities will continue during the next decade. This generosity would not be so if the commercial corporations of Ontario thought for a moment that the nonprofits were in competition. Why then the concern? Is the corner grocery store, such as Loblaws, concerned with the Girl Guide who sells cookies door to door? Is the local restaurant, such as Scott's or any of the other major restaurants, concerned when the Knights of Columbus holds a steak fry? Or is it the Holiday Inn that is threatened by the guest house of a local regional college?

I might add one other thing. The Alouettes, the Argonauts and many of the other football teams in Canada will have to be concerned if the Ottawa Rough Riders become a nonprofit corporation such as we heard on the radio this morning where they want to become a community, nonprofit corporation. That is where you are going to have double competition: competition first from a financial point of view, and competition when these teams get together.

In the true sense of the word each of the abovementioned nonprofit corporations, the Girl Guides, the Knights of Columbus and the regional college, is in competition with a neighbouring commercial corporation. I hope the concern of this committee and of the entire Ontario Legislative Assembly relative to Bill 131 is not to tax a nonprofit corporation because it infringes upon the possible trading area of a commercial corporation but rather to tax a nonprofit corporation if it realizes unrelated business income. The laws are already in place--closely defined by Revenue Canada and by the province of Ontario--as to the legitimate chartered purposes of a nonprofit corporation.

12:00

"Purpose" in the language of corporate law is a technical term. In the ordinary sense of the word, the "purpose" of a nonprofit corporation is the object for which the corporation is formed: the aim, intention or plan it is meant to effectuate. Such purpose must be of a charitable, educational, religious, social or other nonprofit nature. In corporate law, "purpose," or more often "purpose clause," means the clause in a corporation's charter which formally states the object or objects the corporation was organized to accomplish. Thus the word refers to the usual short summary of the reason for the existence of a corporation. This is the stated reason as distinguished from the underlying personal reason of its members for existence. The underlying reason for existence in a commercial or trade corporation is the desire for pecuniary gain, whereas in an eleemosynary corporation moral or ethical objectives are foremost.

I would like to think that for nonprofit corporations, the very approval of incorporation by this province has satisfied you as to the legitimacy of such nonprofits. If the purpose is contrary to public policy of state, the charter should never have been approved in the first place. If the purpose

amounts to an evasion of other laws, approval should be denied or, if after the fact, suspended. Such would be the case, for instance, if a corporation is carrying on profit-making activities under the guise of nonprofit form or solely to evade the burden of taxes on private income.

Therefore, there are very few if any, nonprofit or charitable corporations that deliberately violate their expressed purposes by engaging in profit-making ventures to enhance the organizers or the specific individuals. There are any number that do engage in some form of business activities, all of which directly promote the objects for which the corporation was organized. This is not a prohibited function under provincial law. The trend is definitely in the direction of permitting business activities to nonprofit organizations provided such activities are in the furtherance of its corporate purpose. Conceivably in the future, a "distribution of income and profits" test will assume primacy; but for the moment, to introduce legislation such as Bill 131 that would directly affect every nonprofit corporation would be devastating and have far-reaching implications that I am afraid would be unmanageable and confiscatory.

The United States has already addressed this issue. Since the early 1950s, nonprofit corporations have had to pay tax on their unrelated business income. The 1969 Tax Reform Act makes all nonprofit organizations subject to this law. There are no exceptions any more, though there are delayed effective dates and special rules for churches.

In lieu of sweeping all nonprofit corporations in under Bill 131, perhaps the Minister of Revenue should be addressing specific instances of abuse through this legislation.

I therefore implore you to be assured that before Bill 131 leaves this committee, it is refined in such a manner that it addresses only those cases where the nonprofit corporate purpose has been violated and pecuniary gain has inured to the benefit of its recipient members. Again, I thank you. I draw your attention to the summary sheet that will give you an indication of the size and the magnitude of nonprofit corporations and so that you may also understand there is a difference between a charitable corporation and a nonprofit corporation. Thank you.

Mr. McKessock: I take it there is a change in the act now that puts nonprofit and charitable organizations into one category. Is this a change from the past?

Mr. Lettner: The change in the act is "'business' includes any business activity whether or not such activity produces or is intended to produce a profit." Prior to 1983, when we had the Caisse Populaire de Hearst case, the assessor had a number of tests to look at a property or business to see whether, in his or her sense, it was a business. They looked at the intent to make a profit as well, the characteristics of the business and whether it was in competition with other businesses. After the Hearst case, the preponderating test seemed to be the ability to generate a profit. If it did not generate a profit, it was exempt from business tax.

The purpose of the amendment is not to put a business assessment against charitable institutions, it is to put a business assessment against properties that are carrying on a business activity, not a Girl Guide once-a-year cookie sale or a steak fry by the Knights of Columbus. It is to put it against a nonprofit organization such as Goodwill, which is operating a store that sells used clothing and fixtures in direct competition with a store that is selling the same thing next door.

Mr. McKessock: Does it kind of go along with the sales tax? What about the Royal Canadian Legion or a church organization? Where do you draw the line? I can see them being in competition with public business if they are going to be giving a banquet every week of the year. Let us say they are going to give 50 banquets and compete with somebody who is in that business. If they are giving banquets that pertain to their own members--

Mr. Lettner: It is not going to affect them.

Mr. McKessock: --it is not to make a profit. If they were putting on banquets for different associations outside their own, for weddings or whatever, it would be to generate a profit and they would be competing.

Mr. Smith: That is true, but that is not my major concern. My major concern is the definition and the delineation of a charitable organization, i.e., the guest house at the University of Toronto. It is open 365 days a year. Are we going to close down or tax the guest house of the University of Toronto?

In our specific instance, we are a year-round Bible conference. We serve meals to the guests who come on our grounds. We have accommodations where people stay in our facilities 365 days a year. These facilities, whether they be the dining room or the accommodation, are for the distinct purpose of serving and ministering to the people who are on our grounds.

Mr. McKessock: Then it is not a business. You are not doing it for profit.

Mr. Smith: That is what I would like to think, but the law does not differentiate.

Mr. Lettner: To start with, if it is a seminary of learning--and that is probably how you are classified--you are not paying realty tax either.

Mr. Smith: I wish we were not, but we are paying \$42,000 a year in property tax.

Mr. Lettner: Then it is not a seminary of learning. The University of Toronto is exempt. It pays a grant per student to the government. Many seminaries of learning--and many of the camps in Muskoka have been so declared--are exempt from realty tax as well as business tax.

Mr. Smith: I would very much like to have a meeting with you privately so that I can obtain that same favourable ruling with regard to my \$42,000 a year.

Mr. Lettner: I cannot grant you that, but most of those in Muskoka have been granted by the courts. However, you may have a meeting with me privately any time you want to call, sir.

Mr. Smith: Thank you.

Mr. Chairman: Are there any other questions?

Mr. Guindon: I have one short question. First, may we congratulate you on your brief. It is very enlightening and interesting. I will give you an example and I would like you to answer whether you think it is a charitable or nonprofit organization. If either the church or the group caters to the

public--rents its hall, has meals and banquet facilities--would you consider that a business to make money?

Mr. Smith: Yes. In my estimation, that would come under what is known in the United States as unrelated business income and it should be taxed.

Mr. Guindon: In another matter that might not concern us too much here in Canada, do you think Jerry Falwell and Billy Graham are nonprofit companies?

Mr. Smith: Yes, I dare say that within the context of both US and Canadian laws, both organizations fall under the purview of being charitable, nonprofit religious organizations.

Mr. Guindon: Even if they are both millionaires?

Mr. Smith: I think that is a misnomer. I do not think we have any evidence that either of those gentlemen is a millionaire.

Mr. Chairman: Thank you very much, Mr. Smith.

Mr. Smith: Thank you, Mr. Chairman, and I appreciate this opportunity.

The committee adjourned at 12:12 p.m.

STANDING COMMITTEE ON GENERAL GOVERNMENT

ASSESSMENT AMENDMENT ACT

THURSDAY, DECEMBER 4, 1986

Afternoon Sitting



STANDING COMMITTEE ON GENERAL GOVERNMENT

CHAIRMAN: McCague, G. R. (Dufferin-Simcoe PC)
Fontaine, R., (Cochrane North L)
Grier, R. A. (Lakeshore NDP)
Guindon, L. B. (Cornwall PC)
Henderson, D. J. (Humber L)
Lane, J. G. (Algoma-Manitoulin PC)
McKessock, R. (Grey L)
Pollock, J. (Hastings-Peterborough PC)
Sargent, E. C. (Grey-Bruce L)
Sterling, N. W. (Carleton-Grenville PC)
Swart, M. L. (Welland-Thorold NDP)

Also taking part:

Callahan, R. V. (Brampton L)
Ferraro, R. E. (Wellington South L)
Ward, C. C. (Wentworth North L)

Clerk: Deller, D.

Witnesses:

From the Credit Union Central of Ontario:

Gillam, G. H., Director, Legal Governmental Affairs and Administration

From the Council of Ontario Construction Associations:

Spratt, J. B., Chairman
Greupner, J., Chairman, Tax Committee
Dolson, D., First Vice-Chairman
Frame, D., Executive Vice-President

From Marineland:

Holer, J., President
Blidner, M. R., Counsel
Donkin, W., Consultant

From the Ministry of Revenue:

Lettner, W. J., Assistant Deputy Minister, Property Assessment Program
Patterson, E., Director, Tax Appeals Branch

From the Town of Vaughan:

Panizza, R. A., Town Clerk
Somerville, S. C., Chief Administrative Officer

From the Township of Malden:

Goodchild, A. J., Clerk-Treasurer
Wilson, F., Solicitor
Gibb, C., Reeve

From La Fédération des caisses populaires de l'Ontario Inc.:

Frenette, R., General Manager
Alie, J. B., President

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday, December 4, 1986

The committee resumed at 3:25 p.m. in room 228.

ASSESSMENT AMENDMENT ACT
(continued)

Resuming consideration of Bill 131, An Act to amend the Assessment Act.

Mr. Chairman: I call the meeting to order. The first presentation is from the Credit Union Central of Ontario. Gary Gillam is the director of legal and governmental affairs and administration.

CREDIT UNION CENTRAL OF ONTARIO

Mr. Gillam: The presentation I would like to make today is documented in a submission I have given to you in written form. I do not plan to review it in great detail.

Mr. Chairman: Just a minute. Can you find a Liberal in the House, Bernie?

Mr. Newman: They are all over the place. Do you want me to bring one in?

Mr. Chairman: It would be a good idea, or join us yourself.

Mr. Gillam: The materials I have given you consist of three things. The first is the information package that the credit union system has developed in response to the discussion paper the Minister of Financial Institutions (Mr. Kwinter) released on August 22. Later on, I would like to comment briefly on some of the cost implications if that discussion paper is implemented.

In the kit, you will see a discussion paper on the issue of affordability. In the fourth numbered paragraph, a comment is made in relation to the Assessment Amendment Act. We see the Assessment Amendment Act as introducing an additional cost to the Ontario credit union system at a time when the government is proposing a number of other new additional costs. We see the cumulative effect of these costs as having the potential seriously to undermine the viability of the system over the longer term.

The second thing is the written submission on the legislation in question. I have not gone back and pulled out the lengthy submission we made in June 1985 when the legislation was first discussed. We picked out from our submission the two key points I would like to review with you today. The first deals with the credit union difference, with why we feel the Assessment Act should reflect that credit unions are not like banks or trust companies, and the second issue is one of timing, which ties into the issue of affordability.

By way of a brief introduction, Credit Union Central of Ontario, the organization for which I work, is a trade association and central bank for the Ontario credit union movement. We have 756 member credit unions. Of our member

credit unions, only 10 have assets of more than \$100 million. The business tax assessment issue is one in which Credit Union Central has had a long-standing interest.

I am sure by now members of the committee are familiar with the Caisse populaire de Hearst Ltée decision. Central spearheaded that litigation, which went to the Supreme Court and resulted in a determination that the caisse populaire in question was not a business within the meaning of the Assessment Act.

When that decision was handed down, we sought from the then Minister of Revenue, the member for Durham West (Mr. Ashe), an indication that the benefit of that decision would be extended to the entire credit union and caisse populaire movement by way of an amendment to the Assessment Act. His response was to recognize that the Supreme Court had made a determination that credit unions were not a business and he instructed his regional assessment commissioners not to assess credit unions and caisses populaires for business tax.

The litigation involving Caisse populaire de Hearst included three appeals prior to its going to the Supreme Court and involved legal costs exceeding \$45,000. We thought when the minister gave the regional assessment commissioners that directive the issue had truly been laid to bed.

As events unfolded, the city of St. Catharines was quite dissatisfied with the minister's directive and subsequently pursued two credit unions for business tax, disregarding the directive of the Minister of Revenue. St. Catharines was also active in the Association of Municipalities of Ontario, which has requested the introduction of the Assessment Amendment Act as it relates to credit unions.

15:30

The anomaly is that of the 10 credit unions that have assets of more than \$100 million, two are in the St. Catharines-Niagara Falls area. In feeling that credit unions somehow should be lumped in with trust companies and banks, the city of St. Catharines has a perception of credit unions that does not reflect the reality, which is that the vast majority of our 756 member credit unions are relatively small and in no way comparable to banks and trust companies.

We have said for some time that credit unions are different. I think members of the committee are familiar with the credit unions in their ridings and with the history of the movement. Last week, when I was before the committee in another capacity, one of the questions was: "How do we differentiate credit unions from banks and trust companies? Why are you different?" I have set out as briefly as I can in a written submission why we think we are different.

The first difference is that we do not issue shares that are risk capital. Our shares are in no way comparable to the ones a bank or a trust company might issue. The shares do not have voting privileges. Furthermore, the control of the credit union is not determined by the number of shares one holds, but rather it is democratically controlled.

Second, the boards of directors and committees that control credit

unions are invariably made up of volunteers who serve totally without remuneration.

The third and perhaps most meaningful distinction is that we do not exist to maximize profit. For a bank, a trust company or any business, the test of success is how much profit it has generated. The test of success for the credit union system has been and remains whether we have been innovative in terms of our service development. Have we been responsive to the emerging needs of our members? How vital and vibrant is the democratic, participative control structure? Those measures of success are so meaningfully different from those of banks and trust companies that we feel the Assessment Act should reflect that difference.

I mentioned earlier the issue of timing and how that relates to the issue of affordability. What I would like the committee to recognize is that the Assessment Amendment Act, while it is our focus today, cannot be considered in total isolation from some of the other developments relating to the credit union and caisses populaire movement. As many committee members are aware, there is tremendous anxiety in the credit union system about some of the proposals that are coming forward to eliminate accumulated deficits.

As of the most recent deposit insurers' statistics, the total system deficit exceeded \$112 million. If the Program for Change, which the ministry announced in August, is introduced and implemented without change, the basic effect is that the strong credit unions are going to be asked to resolve the problems of the weak ones without government assistance. There is within the system a willingness to make that contribution to avoid the necessity of Ontario having to extend public funding to the system. There is that willingness, provided that the time frames are not so compressed as to make it unmanageable and that other tax legislation does not make a first call on the surplus generated by the stronger units.

Reducing all that to the issue we have before us, if we go through with the business tax amendment, we are going to end up making an additional levy on credit unions at the very time they are being asked to accelerate the recovery of the system, a recovery that has been ongoing since 1983.

In response to the ministry discussion paper, our deposit insurer was critical of the various elements of the Program for Change. One of the points the deposit insurer made was that the effect of charging too much against the system too quickly would be to destabilize strong credit unions. We are concerned that the cumulative effect of other assessments combined with the Assessment Amendment Act will be seriously to undermine the vitality of the strong credit unions, which are going to be paying the bills for the weaker ones.

With that in mind, the position of Credit Union Central on behalf of its 756 credit unions is that the current exemption should be continued and that the issue should be reconsidered within five years. After five years, if the system has recovered, and if there continues to be growth in the system, increased sophistication, a broadening of services and continuing mergers of smaller units with bigger ones, the issue may be reconsidered, but at this time, the timing could not be worse for the system.

I might anticipate one question. In looking for a compromise, people have sometimes asked, "If there is going to be some assessment of credit unions, and if one has to differentiate some from others, what is a reasonable cutoff point?" We have looked at that in terms of how we would differentiate

the credit unions in the St. Catharines area, the large multiservice ones that to the regional municipality look to be comparable to small trust companies, from others? Generally, the amount that differentiates full service, multibranch, sophisticated credit unions from the ones in our movement we perceive as more mainstream is \$100 million.

If the Assessment Amendment Act were to make only credit unions with assets of more than \$100 million liable for business tax, 10 of our members, and 11 within the Ontario movement, would be subject to business tax; two within the city of St. Catharines would be subject to business tax.

Mr. Swart: I want to make a couple of comments and then ask a question or two. I agree with the philosophy and reasons expressed by the representative of the credit unions that credit unions are in a different situation from other commercial enterprises. That should be continued.

I want, though, to ask you with regard to--this proposed business tax is not of the magnitude of income tax. However, am I not right in assuming that if the Minister of Financial Institutions goes through with his policy for building up reserves, he will be putting the credit unions in a position where they are going to have to find about \$70 million a year extra to build up the reserves and in fact are going to have to pay tax on that? I am talking about corporation tax. Is it not right that they now are being forced into a position of paying a very substantial tax that they have not had to pay before?

Mr. Gillam: That is true. I think of credit unions as being somehow pushed along a continuum. At one end of the continuum is where we were until two or three years ago as not-for-profit organizations with no risk capital. In 1983, credit unions were required to maintain surpluses. Now those surplus requirements are being beefed up, so we are looking at being pushed further along the continuum. With some reluctance, there is a requirement to maintain and accumulate a surplus of five per cent of assets.

15:40

Mr. Swart: The money that goes into reserves is subject to corporation tax?

Mr. Gillam: Corporation tax and federal income tax.

Mr. Swart: What percentage of tax will be levied?

Mr. Gillam: We are taxed at the small business tax rate of 25 per cent.

Mr. Swart: In effect, if it is \$70 million a year they are being forced to put into reserve, 25 per cent of that will have to be paid in tax.

Mr. Gillam: If income levels remain. If they are able to generate that level of surplus, that would be the tax they would be required to pay. We are not entirely confident we are going to be able to meet those surplus requirements.

Mr. Swart: No, but if they do and if that becomes a requirement by the minister, as he has said it is going to be--although he may ease off that somewhat--of that \$70 million or more each year that has to be put in reserve for the next five years, 25 per cent will have to go for income tax.

Mr. Gillam: Yes.

Mr. Swart: You people are faced with a very substantial increase in tax as a result of action by the government. I raise that for the purpose of indicating that this business tax is just another new tax that is going to be imposed on you. It is a tax you have not paid before.

Mr. Gillam: Yes.

Mr. Swart: I feel very sympathetic to the presentation that is being made and our party will not be supporting this change.

Mr. Lane: I do not know that it has much to do with the bill, but you stated something and I am curious about how it would be administered. You mentioned the strong credit unions would provide support for the weak ones. In the past number of years there have been mergers between two or three weak credit unions to make them stronger. Obviously, you would not be doing it that way because a strong credit union would simply be getting stronger rather than helping the weak one. How would that be done? Would there be some kind of adoption plan, where a large, strong credit union would adopt a foster child and support the weaker credit union, or would there be a central pay-in system where credit unions could give support? How would that be done?

Mr. Gillam: I mentioned earlier the \$112 million in accumulated deficits. Government and the deposit insurer feel \$50 million is required to return credit unions that have accumulated deficits to profitability. The balance of those deficits can be accumulated or corrected simply through earnings they are generating now because they have returned to profitability. Of the \$50 million--incidentally, we at Central feel the number is \$70 million--it is proposed that the deposit insurer will pay out the accumulated losses and then assess the entire credit union and caisses populaire system on a pro rata basis for its share of the \$50 million required to resolve all the problems.

Mr. Lane: So you would be getting a larger amount from the stronger ones.

Mr. Gillam: Exactly.

Mr. Chairman: Is this your response to Program for Change?

Mr. Gillam: That is a synopsis of the three key issues. There is a much lengthier discussion paper with a blue cover that you should have already received from me, along with this.

Mr. Chairman: I am not sure we have. Do you have it, Mr. Swart?

Mr. Swart: No, I do not. I have not been through my mail today but as of yesterday I have not received it.

Mr. Gillam: I signed them last week. Where they are is probably known only by Canada Post.

Mr. Chairman: The next presentation is from the Council of Ontario Construction Associations, Mr. Spratt, chairman; Mr. Greupner, tax committee chairman; Mr. Bulmer, executive director of the Toronto Construction Association; Mr. Frame, executive vice-president of COCA.

These gentlemen want to take pictures of themselves so they can prove to their association they were here, and we should not object to that.

Mr. Frame: John Spratt, our chairman, will be making a presentation.

Mr. Chairman: Okay. Others can join him there if they so wish.

Mr. Spratt, will you introduce the people for the benefit of those recording, please.

Mr. Greupner: John Greupner.

Mr. Spratt: John is chairman of the tax committee. My name is John Spratt, chairman of the Council of Ontario Construction Associations this year.

Mr. Dolson: Doug Dolson, vice-chairman of COCA.

Mr. Frame: David Frame, executive vice-president.

COUNCIL OF ONTARIO CONSTRUCTION ASSOCIATIONS

Mr. Spratt: We have distributed to the committee a full paper on our position on Bill 131. I would like to read some brief comments concerning that position if you would like to hear from our point of view.

The Council of Ontario Construction Associations, COCA, is the voice of the construction industry in Ontario with authority to speak for all our member associations in the industry on all matters of provincial legislation, excluding labour relations.

COCA is an association of associations, composed of 43 member trade associations or local mixed associations or construction associations throughout Ontario. COCA associations have more than 7,000 member companies employing well over 300,000 people in Ontario.

COCA has followed Bill 131, An Act to amend the Assessment Act, with much concern, as it has proceeded to the committee stage. We wrote to the Treasurer (Mr. Nixon) in September noting that the bill would amend the Assessment Act to allow a nonprofit association, such as COCA and its member associations, to be taxed as a profit-oriented business.

The explanatory notes of Bill 131 explain that the purpose of the bill is:

"(a) to provide that nonprofit corporations that engage in commercial activities in competition with business corporations or promote the interests and profits of their members are liable for business tax."

Section 1 redefines business "to include all commercial activities and not limit it to activities earning, or intended to earn, a profit."

Further to this, section 4 of the act provides "that nonprofit corporations that engage in commercial activities in competition with business corporations, such as credit unions and race tracks, or promote the interests and profits of their members, such as stock and commodity exchanges, are liable for business tax. It also ensures that all land owned and occupied by a

business is assessed for business tax at a single rate based on the nature of that business."

The legal opinion received by COCA clearly states that this act, as written, would make COCA and all our member associations taxable under this definition. Contrary to this, though the Treasurer in Hansard on November 4 explained that it was not the purpose to expand the business assessment base to cover trade and professional associations and chambers of commerce, we sincerely believe that COCA and its members should not be included under this law.

As I mentioned, we are made up of 27 province-wide trade associations and 16 local mixed construction associations. Each has many member companies that engage for profit in competitive commerce.

Activities vary slightly from organization to organization. The provincial trade associations, such as the electrical contractors and the general contractors, represent their members in labour negotiations, provide education and technical information through publications and programs, update members on government legislation and procedures and promote employment possibilities to the trade generally.

15:50

The next local construction associations are made up of a regional assortment of contractors, manufacturers and suppliers. They usually operate a plans room for projects put out for public tender and provide information and seminars on a wide range of topics such as the application of tax, workers' compensation and other important information relevant to the industry.

It is not a goal of these associations to make a profit. At most, they budget to bring in revenue from dues and seminars, etc., to cover their costs, with perhaps a cushion against lean years. Commerce is not an aspect of the associations' work. They provide services directly to members on behalf of members.

Competition has no place in association activities, even though it is the chief activity of its member companies. An association makes representations on behalf of members to the buyers of construction. The message is only informational. Associations have nothing to sell.

Unfortunately, the newly added definition of "business" is likely to tax the noncompetitive associations that the Council of Ontario Construction Associations represents. Clearly, Bill 131 goes beyond the stated purpose to tax nonprofit corporations that engage in commercial activity in competition with business corporations or promote the interests and profits of their members. Instead, it will impose business tax on organizations that promote the interests of its members.

Associations have long been recognized and encouraged by governments at all levels. Associations are regarded as beneficial to the community, and rightly so. By providing information and education, associations upgrade or maintain the knowledge and responsibility, in our case, of construction companies. Because of this service, the quality of the construction itself is improved.

The federal and Ontario governments now recognize this by exempting

associations from income tax. The Ontario government, in discouraging them by imposing business tax, raises an inconsistency.

We believe that since it is the government's intention not to extend business tax to COCA member associations, Bill 131 should be amended as our submission suggests so that this principle will be established in law. The amendments COCA proposes are the same as those suggested recently to you by the Institute of Association Executives. They include the following changes:

Delete the definition of "business" as unnecessary, inappropriate and problematical; delete "general purpose"; delete the note to section 1; amend the note to section 4 by deleting "promote the interests and profits" and substituting "provide the major business facility" so that the first sentence reads: "The effect of the re-enactment of subsection 7(1) of the act is to provide that nonprofit corporations that engage in commercial activities in competition with business corporations, such as credit unions and race tracks, or provide the major business facility of their members, such as stock and commodity exchanges, are liable for business tax."

Add to subsection 7 a new subsection, capable of future expansion when required, as follows: "A person occupying land for the purpose of a credit union, caisse populaire, stock exchange, commodity exchange or race track is liable for business assessment whether or not the person produces or intends to produce a profit in carrying on those activities."

These are the recommendations we submit to you as the committee responsible for reviewing this piece of legislation. I welcome any questions or comments you might have at this time.

Mr. Chairman: Any questions?

Mr. Guindon: Your last one really strikes me. You have categorized credit unions, caisses populaires, stock exchanges and race tracks all together and you say they should be assessed. Is that right?

Mr. Frame: We are not necessarily asking you to assess them. We are just asking you to clarify it in the legislation to make it clear our type of association will not be included under the legislation.

Mr. Guindon: Personally, I have my doubts. I do not think it is the intention to put your association in it. For myself, I want to thank you very much for the brief. It will certainly help us to be clear.

Mr. Lettner: The amendment talks about business activity. On page 4 of the association's brief, it says, "...provide education and technical information through publications and programs, update members on government legislation and procedures and promote employment possibilities of the trade generally." None of those seem to me to be a business activity.

Even under the proposed amendment, it would not be our intention to assess these associations for business, because they are not carrying on a business activity, nor are they in competition with other profit makers who are carrying on a business activity. If you remember, the executive brief had a very similar amendment to the act. Mr. Epp at that time promised, on behalf of the ministry, to take a very close look at that amendment.

I do not believe from what you are doing that you are in a business activity even now as we visualize a business activity under the act or that

people visualize a business activity. Providing education and technical information through publications and programs does not seem to be a commercial activity to me.

Mr. Frame: Could I just explain a little bit? We went to our lawyer to ask for an assessment if we would be included under that. The problem is that many of these activities we have described here often mean putting on a seminar where there may be a fee for attending. It may mean providing written information where there may be a fee. In all cases, there is some sort of membership fee, etc. Although we certainly are not a business, under a very broad definition of "commerce" such as this act seems to bring forward, there is money trading hands and there is a bank account. These associations are run on a professional basis, like a business.

It was the opinion not just of our lawyer, but I understand, of lawyers from other associations that under the broad definition we are looking at here, we would all be taxable.

Mr. Lettner: May I answer that? Most associations or institutes have an annual convention or seminar or something else they conduct once, twice or three times a year in hotels, convention centres or halls. The hall in which it is carried on is paying a business assessment tax, not the organization that uses the hall.

We have heard that from other associations. They run a seminar or a convention and they put it on once or twice a year. It is usually for one, two, three or four days, and that would be a business. In our opinion, it is not a business and it is not liable for business assessment. However, the hall or hotel that is rented to that association or that institute is carrying on a business and is liable itself to business assessment.

Mr. Chairman: As has happened with many other organizations, some similar to yours, the advice they got is the advice you got, that the definition is sufficiently broad that you could be captured. While that may not have been the intent, it is good that you have taken the time to explain to us what the actual function of your association is. As you said, the definition you suggested is the same one that was offered to us last week. The ministry people said they would take a look at that and tell them about today's presentations. We will have a meeting next week to consider various points raised by the people who have appeared before us.

If there are no further questions, thank you very much.

Mr. Spratt: Thank you, Mr. Chairman.

16:00

Mr. Chairman: The next presentation we have is--I cannot say it without doing some advertising for these gentleman--Marineland. Mr. Holer is the president, and I think he has others with him. You might introduce them to us, Mr. Holer. Can we proceed?

MARINELAND

Mr. Blidner: My name is Mark Blidner. I appear before the committee as counsel to Marineland. On my left is John Holer, president of Marineland. On his left is Walter Donkin of Smith Donkin Associates Ltd., acting as a consultant to Mr. Holer. A handout has been given to all members. Mr. Holer

has asked me to lead him through his presentation by asking him some questions, to make it a little easier for him to present his position. If that is suitable, Mr. Chairman, I will proceed.

Mr. Chairman: That is fine.

Mr. Blidner: Marineland's position here is in support of the proposed amendment to the Assessment Act with respect to the exemption for amusement rides, etc. It appears here as a taxpayer quite willing to pay its fair share of taxes on land and buildings, as it is doing right now on a project in Niagara Falls that comprises about 600 acres. Mr. Holer had commenced a four-phase expansion program on the 600 acres in Niagara Falls, with a proposed capital budget of \$100 million. I ask him at this point to describe to the committee the expansion program he had in mind.

Mr. Holer: Marineland has been in business for the past 25 years. Two years ago, we went into a large, \$100-million expansion. To complete the \$25-million addition, we found ourselves in the situation of continuing the expansion with amusement rides, such as a monorail.

It would put us in the situation that there is no way possible to continue with expansion. To give an example, we figured the monorail I have bought, a two-mile-long track with a support structure, which is on the site in storage right now, would cost us annually more than \$300,000 in municipal taxes alone. With that kind of financial burden and with the type of structure I have in place, as far as making the finances work is concerned, it was totally impractical. We have no choice but to stop the expansion.

As for the other rides we have in mind, a four-mile train ride and three-mile boat ride, we are still not quite clear how we will be assessed on those rides. The rides are a very important part of Marineland's expansion.

The way we had planned to add the three other phases to the expansion was the right type of mixture so we could introduce the attractions along with the rides for a proper balance to create an interest the tourists are looking for. With the enormous cost of this equipment, it is impossible for us to expand.

In looking at the manufacturing industry, we feel it is an unfair situation. That industry is paying taxes on properties and buildings, not on the equipment. In most cases, in the overall picture, the equipment outweighs the cost of investment. We find ourselves in the same situation.

Mr. Blidner: Could you tell the committee the buildings you plan as part of your extension for which you would be paying realty taxes?

Mr. Holer: One of the most important buildings that would fit into those plans is the 17,000-seat stadium where we would have the marine animals perform. That is a very substantial structure, and we feel it would bring an enormous tax base to the municipality.

Mr. Blidner: Are you planning other buildings?

Mr. Holer: Yes, we have programmed several other buildings. One of them is the marine display area, the aquariums, a huge shark exhibit, a penguin exhibit, restaurant facilities, the village and many support buildings to operate this type of attraction.

Mr. Blidner: Has your staff calculated the additional realty taxes you would be paying as a result of these additional buildings?

Mr. Holer: Yes. They calculated that by the time we spent \$100 million, we would pay in the neighbourhood of \$2.5 million in additional taxes on buildings.

Mr. Blidner: What is the current staff requirement at Marineland?

Mr. Holer: At the moment, we operate with approximately 500 people. Of those 500 people, around 400 are summer help and around 100 are our year-round staff.

Mr. Blidner: If you were to implement your expansion, how large would your staff grow?

Mr. Holer: By implementing the expansion, we would increase the permanent staff to around 300 people and the total staff to around 1,400 to 1,500.

Mr. Blidner: Could you tell the committee about the important role Marineland plays in the tourist industry in Niagara Falls?

Mr. Holer: About three years ago, the provincial government and the Niagara Falls tourist bureau did a study on hotel accommodation and where people were going. At that time, they came out with the figures we had already provided. Forty-three per cent of hotel rooms were sold because of the existence of Marineland. Perhaps I could explain in detail how that works.

We are spending around \$2 million annually in advertising, and we go as far as Detroit, Pittsburgh, Cleveland, Rochester, Montreal and throughout Ontario with our advertising. When visitors come to Niagara Falls, they cannot visit Marineland and Niagara Falls in one day. As a result, they have to overnight, and by overnighting we have an enormous spinoff business for the hotel industry.

16:10

Mr. Blidner: Has the council of Niagara Falls taken a position on the proposed amendment?

Mr. Holer: Yes. After the market value assessment came into effect, we had meetings with the council, and the council agreed to support our issue. The mayor and council have helped us to visit many ministers to express their concern and to support the issue that the rides should be treated the same as the equipment within the manufacturing industry.

Mr. Blidner: You mentioned before--I would like you to expand upon it--the need to continually introduce new attractions to maintain your market position.

Mr. Holer: Amusement attractions such as Marineland, in order to survive, have to renew attractions constantly. We noticed last year and this year a slight decrease in the number of visitors simply because we were not providing any new attractions. That is a well-established practice in all the theme parks throughout North America for them to continue to bring the same visitors or to increase the visitors; they have to provide those types of attraction and rides to keep bringing them back again.

Mr. Blidner: I have two final points, Mr. Chairman, if I could just state them. Mr. Holer has touched on them.

The analogy we wish to make is to the manufacturing industry, where there is an exemption for equipment used to generate a product. Marineland's position is that in fact it is generating a product here also--tourism--and that the proposed amendment is really an extension of the policy already found in the Assessment Act to encourage capital investment for the creation of a product, to encourage growth and innovation.

Finally, until Marineland understands the status of the proposed amendment, it cannot proceed with its expansion program. It does not appear economically viable to introduce the vast amounts of capital for amusement rides until it knows whether they will be taxable. Subject to questions, those are our presentations.

Mr. Lane: I have a question for clarification. You mentioned this auditorium or show building; was its capacity 7,000 or 17,000 seats?

Mr. Holer: Seventeen thousand.

Mr. Lane: Thank you.

Mr. Pollock: I have one question for Mr. Lettner. With respect to an amusement ride such as the monorail, no doubt it costs a fortune to put one of those in. But once it is in, if it had to be sold again, it would be worth hardly anything because there are very few people out there who want a two-mile-long monorail. How do you arrive at assessing something like that? I take it you have never had to do it.

Mr. Lettner: It is similar to the roller-coaster Mr. Holer spoke of. Very few people, unless they are operating an amusement park, will want to buy a roller-coaster. What we are assessing is the foundation, the supports and the tracks, not the cars; and we are doing it very much on a cost basis--what it would cost to put it in, less depreciation. We would do the monorail in exactly the same way; we would not be assessing the cars that run along the monorail, but we would assess the foundation and the track.

Mr. Pollock: You always have assessed roller-coasters and that sort of thing?

Mr. Lettner: We have assessed roller-coasters with a degree of permanency, the ones in amusement parks. We do not nor can we assess the ones that come into a shopping centre one night with their merry-go-rounds and that and move on the next. Those with a degree of permanency--roller-coasters, monorails, water slides and so on--we have assessed.

Mr. Guindon: Perhaps Mr. Lettner will help me for a minute so I can understand it a little better. Right now they are being assessed?

Mr. Lettner: That is correct.

Mr. Guindon: With Bill 131, they are going to have a certain amount of exemption?

Mr. Lettner: That is correct.

Mr. Guindon: You are not complaining about the bill? You are saying to go ahead?

Mr. Blidner: We are in favour of it.

Mr. Lettner: The exemption would apply only to the rides, and then only to the tracks, trestles and rails, not to the buildings.

Mr. Guindon: And the foundations?

Mr. Lettner: The foundations of the rides would be exempt too. It is similar to manufacturing machinery and the foundations upon which they rest.

Mr. Guindon: Out of curiosity, Mr. Holer, how much do you expect the number of visitors, clients or tourists to Marineland to increase with the \$100-million expansion?

Mr. Holer: We feel it will very drastically increase visitors.

Mr. Guindon: You do not have a study showing how much?

Mr. Holer: We have a study. We will probably increase by 300 per cent by the time we complete the \$100-million expansion.

Mr. Guindon: You will get 300 per cent more visitors per year?

Mr. Holer: Yes.

Mr. Blidner: This is a 10-year program, is it not?

Mr. Holer: Yes.

Mr. Guindon: Congratulations. I think you have a nice place.

Mr. Holer: Thank you.

Mr. Chairman: What is your attendance in 1986?

Mr. Holer: In 1986, the attendance is slightly under 800,000.

Mr. Epp: Mr. Holer and I met a few years ago when he spoke to a task force in Niagara Falls which I chaired. I was in support of your request at that time. The ministry subsequently came out in support of it and still supports it. As a result, legislation is before the Legislature right now.

The city of Niagara Falls has been very supportive of this exemption for some time because of the tourist dollars attracted as a result of your place, Marineland. I have no problems with it. Some municipalities have concerns about it, but we are trying to deal with that and we hope the legislation is supported by all sides of the House. I appreciate your presentation.

Mr. Chairman: The next presentation is from Mr. Somerville, the chief administrative officer, and Robert Panizza, the clerk, of the town of Vaughan. They are also conveying a message from the regional municipality of York. In your folders, you have two exhibits from York and one from Vaughan. Mr. Somerville, are you the spokesperson?

TOWN OF VAUGHAN AND
REGIONAL MUNICIPALITY OF YORK

Mr. Somerville: I am the chief administrative officer of the town of Vaughan. We had hoped Mayor Lorna Jackson could be in attendance to make this

presentation, but she sends her sincere regrets. She is quite ill and unable to attend.

Much of our presentation works on the premise of attempting to establish the relationship between the cost of local government services to facilities and the assessment base that yields the taxes to pay for those services.

Mr. Chairman, I look to you for some direction as to whether you wish us to proceed through the brief--I believe you have it before you--or whether you wish us to address some of the more salient positions within the brief and perhaps explore Vaughan's concerns with respect to the Assessment Amendment Act.

Mr. Chairman: I have not had an opportunity to read these, but is York's position basically the same as Vaughan's?

Mr. Somerville: Yes, it is. In the discussion with Eldred King, chairman of council of the regional municipality of York, I am authorized to pass on to you both his greetings and the message that the regional municipality of York council formally endorsed the position of the town of Vaughan as identified in our brief.

Mr. Chairman: Then it would be sufficient if you address your own brief and we will take it that Mr. King and company endorse what you say.

Mr. Somerville: Thank you. I will be making reference to some comments Mr. King had throughout my comments.

As this brief indicates, this submission is made on behalf of the council of the town of Vaughan. It is a formal council resolution that supports this brief and it is to express the town of Vaughan's opposition to the proposed amendments to the Assessment Act, which would grant an exemption to amusement rides. The government's intent in this regard has been met with some concern by our council, by the residents of Vaughan and to some degree by the region of York. We believe it is an integrated problem we are facing.

As many of you may be aware, the town of Vaughan is the home of Ontario's most prestigious amusement park, Canada's Wonderland. The town of Vaughan lies immediately north and west of the Metropolitan Toronto boundary, and Canada's Wonderland lies immediately adjacent to Highway 400, running from Highway 401 to the city of Barrie. As such, it is very strategically located on the northwest fringe of Metropolitan Toronto.

The facility of Canada's Wonderland, which opened in May 1981, offers seasonal employment to hundreds of students in the Metropolitan Toronto area as well as full-time employment to plus or minus 200 to 250 permanent employees.

In the town of Vaughan's opinion, Canada's Wonderland is a good corporate citizen which provided first-class entertainment to more than two million people in 1986 and, we believe, a similar number over the past years it has been in operation. However, I think you can appreciate that if one goes into the planning aspects of a facility such as Canada's Wonderland, which goes into a substantially rural community, there was considerable controversy surrounding the impact this facility would have on the community of Maple and the surrounding area.

Canada's Wonderland consumes, if that is the appropriate word, about 350 acres of what could be considered prime agricultural land for this facility

and requires a significant amount of local government servicing. I will touch on that in a moment, but the services I am referring to are water, sewers, police, firefighting, traffic and many other basic, generally accepted local government services.

To accommodate Canada's Wonderland, the province constructed a new interchange on Highway 400 at Rutherford Road specifically for this facility. The town of Vaughan and the region of York allocated water and sewer capacity for the 350-acre site. In addition, improved public transit, road systems and police protection had to be provided, essentially by the ratepayers of the town of Vaughan and the region of York. The total servicing cost for this facility is very difficult to determine because there are three levels of government that provide the services.

During the planning of Canada's Wonderland and in the early years as it has developed, one of the most favourable aspects of the development was the additional property and business taxes that would be provided not only to the town of Vaughan but also to the region of York, which is struggling to keep up with the demands for services caused by an unprecedented rate of growth. I would add that as of today, it is estimated that some \$650 million of construction will be undertaken in the town of Vaughan in 1986. You can appreciate that level of construction places the town of Vaughan in a unique situation vis-à-vis Metropolitan Toronto in trying to deliver people services and local government services at times of extremely high growth.

Mr. Chairman: A lot of people do not complain about that.

Mr. Somerville: That is true in a pure economic sense, but the pressures and demands to provide that service--what happens under the surface of the growth figures--are what is not seen.

Because of the strong opposition to the zoning approvals for Canada's Wonderland, it was necessary to have an Ontario Municipal Board hearing. At that hearing, representatives of Canada's Wonderland emphasized that the tax revenue generated would benefit the community. They claimed the facility would be Vaughan's biggest taxpayer next to Continental Can, a large manufacturing facility. The news that such a benefit--I qualify that, Mr. Chairman; some of that benefit--could be lost to the area is a shock to the taxpayers of Vaughan.

The corporation of the town of Vaughan itself did not oppose Canada's Wonderland. The town of Vaughan approved Canada's Wonderland, but one of the contributing factors to secure that approval of municipal council against some very strong ratepayer action was the understanding that there would be some return in terms of taxation from this quite large and unique facility.

The town of Vaughan in the region of York, like any municipality, has limited servicing capacity. By this, I refer to sanitary servicing capacity, sewage capacity as it is commonly called. It must maximize the use of these services and the tax revenues it will receive on serviceable land. At present, Canada's Wonderland generates approximately \$1.4 million per year in tax revenues.

The proposed exemption that this bill would result in would reduce this levy by \$400,000. Roughly speaking, 27 per cent of the taxes generated by Canada's Wonderland will be lost as a result of this amendment, should it pass.

It should be noted that if the equivalent land, water and sewage allocation had been released for industrial development as opposed to a

recreational or amusement park facility, the municipality would have received between \$4 million and \$6 million per year in tax revenue in perpetuity, with basically no threat of losing that secure revenue base. We believe the committee must consider that as a result of a reduction in taxes in 1986 and successive years and a loss of assessment, a loss of roughly one third of potential taxation revenues from the property that might accrue to the town of Vaughan and the region of York as a whole would occur.

In respect of the permanent tax base, Bill 131 will result in a reduction of the property and business taxes in Vaughan, as I stated earlier, of about \$400,000 per year. This figure includes an annual loss of \$96,600 to the town, a loss of \$55,310 to the region of York and a loss of upwards of \$270,000 to the respective school boards, keeping in mind we are on a regional basis and have regional school boards of public and separate natures. For industrial assessment sharing, we are all in the region of York.

At present, it is proposed that the province will provide grants to offset the loss in revenue for a period of three years. The town finds this measure inadequate. The reduction of the municipal tax base is a permanent happening, and three years are simply not sufficient to phase out one third of the revenue from a major facility. The service requirements of Canada's Wonderland are permanent, and the government must provide a permanent source of revenue for the municipalities that are responsible for the service costs.

16:30

On this point, by way of example, I would like to indicate that although we may lose a third of the revenue coming from Canada's Wonderland, the level of service we must maintain on its behalf will not change. We must provide 100 per cent of fire, police, traffic, water and sewer services to that facility with a reduced revenue. The town of Vaughan is not in any position to buffer this loss. If the amendment passes, we must absorb this loss. There is no offset.

The committee is urged to examine the potential impact of Bill 131 and the exemption of amusement rides on a number of other similar types of property in the province. The exemption of all rides will necessitate the exemption of fixed structures, which are normally assessed in other types of businesses. At present, only the immovable portions of the amusement rides are assessed. Any equipment which can be moved is exempt. At Canada's Wonderland, only eight of 31 rides are assessed, so there are a number of rides from which we are not getting any major revenue now in terms of their permanency.

The committee is asked whether amusement parks are to receive a special treatment that is unavailable to other property in the province. It is also asked whether a precedent is being set that may lead to other special exemptions for facilities. The example we look at is things such as ski resorts and ski lifts, which are totally assessable now. Should this bill pass and it is felt there is a general consensus in the Legislature to provide exemptions to recreation and amusement, however interpreted, we anticipate areas other than amusement types of businesses will come forward looking for similar types of tax exemptions. This may lead to further exemptions of tax bases, not only for ourselves but also for all municipalities, through interpretation of the bill.

The introduction of Bill 131 at this time coincides with a number of events, which raises some questions. The province has presented legislation to assume responsibility for inspecting and licensing amusement rides. I would

specifically like to point out to this committee that the town of Vaughan welcomes that move and we congratulate the provincial government for making it. It was a very important move to accept this responsibility in such a unique area as we are getting into with the high technology of amusement rides.

Therefore, we welcome that move and we recognize the need for specialized knowledge to regulate the safety of these devices, which is not readily available to municipalities. We do not have the staff to handle the inspection of these rides. It is believed the government will establish a licence fee to cover the cost of regulation, as is the practice in other related activities.

The town of Vaughan wishes to make it clear that the increased provincial responsibility in this area does not reduce the need for property tax revenues to provide public services to this facility, Canada's Wonderland, or to any amusement facility which might be exempt under this act. In our opinion, the increased responsibility of the province should be acknowledged through a licensing system.

The services we are most concerned about losing the tax base on are the water and sewer services, the roads and street cleaning and, a very important one, fire protection services.

As a major facility, Canada's Wonderland does not provide its own fire protection. It must depend on the local municipality, but fire protection for a facility such as Canada's Wonderland, with its unique structures, requires equipment that is unique to fire services. It is not just an aerial ladder. It is specialized equipment. From experience in their own municipalities, I am sure members recognize it is very expensive. We must provide specialized equipment for Canada's Wonderland. We must provide rescue services and emergency services of a more global nature. These services must continue every day, 365 days a year. We feel this bill erodes some of the tax base we use to pay for those specialized services for that facility. That is one of the areas that gives us concern.

As you heard in the previous presentation, from the industry in Niagara Falls, they are looking for exemptions. The town of Vaughan takes no issue with either the facility that is looking for the exemption or with the city of Niagara Falls who may be supporting it.

However, we feel the Niagara Falls situation is unique. For better or for worse, the town of Vaughan does not depend on the tourist industry for its economic existence. It is a very quick-growing municipality on the fringes of Metropolitan Toronto made up of some 75,000 inhabitants, who basically have all come from Metropolitan Toronto and expect a Metropolitan Toronto level of service.

We have a major facility in our area that is not a Vaughan facility. It is a Vaughan, region of York, province of Ontario, Canada and eastern United States facility. We welcome it and we support it. However, we also need every bit of money we can get to help pay for the services that go into it. It is from that perspective that we are looking to you to see our side of the fence, as it relates to this clause and the exemption of taxation.

We would state to the committee that whereas we believe we are unique, we also believe Niagara Falls is unique, and although it is not in our brief, we take the position that if the province wishes to assist Niagara Falls in

its endeavours, please do so. We would welcome it and we would support it, but please do so by virtue of special legislation as opposed to general legislation, just from the point of view that it can be through a special bill, through a City of Niagara Falls Act, granted certain considerations, given special circumstances. We would support that.

The timing of the legislation in relation to the recent discussions with investors regarding the construction of a large new amusement centre in the province is something we believe may have some hidden concerns that none of us really recognizes. What I am attempting to get at is this: One of the carrots that entices local councils to look at new and unique proposals is not only the benefit of those facilities but also the taxation and the support that those new facilities may give.

I am sure that in looking at areas such as the West Edmonton Mall, the malls they looked at in Mississauga and other big unique facilities of an entertainment nature, municipalities do not welcome the traffic problems that they bring, or the people problems or the garbage problems, but they are willing to accomodate them if there is some return for the investment.

Consequently, this is how we look at this type of an installation. It was sold, rightly or wrongly, on the basis that it would have an economic benefit to the municipality of the town of Vaughan. The town of Vaughan council, at great political risk in the face of its ratepayers, endorsed that proposal, but five years later, it is faced with a situation where some of the promises are not going to be met.

It is not that they are not going to be met because Canada's Wonderland, which, as I earlier stated, is in our opinion a good corporate citizen, has reneged. Because of special circumstances, the province has looked into the matter and felt that perhaps a review should be taken of this section.

It just brings me back to the point that we say, if some special consideration should be given to some municipality in the province, please do so, but I think the thrust of our import would be to do it through special legislation as opposed to general legislation.

I would have a great deal of difficulty advising other municipalities that came to us, if in their municipality a major theme park was looking to come into their are, because the answer would be, "You are going to get all the problems but you are not going to get that much of the benefits."

When you discount the amount of the total tax bill that goes to the school boards and the region you may be included in, the municipal portion is very small. The amusement structures, which are really the backbone of the amusement business, are what attract people. If they are exempt from taxation, there is really not much the municipalities are going to get out of that land in terms of assessment on the restaurants, shops and some of the other things that may be there.

16:40

Our municipality would be far better to take the same land area, put it under an M1 industrial zone and let it go for industrial development in the economic sense, because the industrial assessment would give us taxes in perpetuity, but generally speaking it will not give us the same level of problems that we have with a unique amusement facility. We are talking of a large one. In Niagara Falls, they are talking of a large one as well.

From the town's point of view and in conclusion, we oppose the proposed assessment for exemption for amusement rides based on the loss of tax revenues to the school boards, the region and the municipality. The town expresses its concern that the exemption may set a precedent affecting the tax status of other forms of real property. In our opinion, the government has a responsibility to ensure the integrity of the assessment system and specifically the vitality of the Niagara Peninsula. The town of Vaughan opposes the exemption of amusement rides because it will achieve the purposes of the government at the expense of the taxpayers of Vaughan and other similar municipalities and, to some degree, we believe at the expense of the integrity of the assessment system itself.

I am authorized by chairman Eldred King also to pass on to you his biggest concern with respect to the legislation. It is not as it relates to the town of Vaughan. It is as it relates to the region of York. His message is very simple: The greatest impact he sees the land with Canada's Wonderland on it having in its present state is on policing, traffic and fire protection services.

We endorse that position. As you can appreciate, those services are quite costly. Policing services for traffic details for one major installation are significant. We believe a reduction in the taxes we get from that installation as a result of this bill--27 per cent--is material enough for the town of Vaughan to bring to you its concerns and let you know personally that we believe and feel that, notwithstanding our current economic situation, we need these taxes in order to preserve our service infrastructure.

I thank you, Mr. Chairman, for the opportunity to make this presentation.

Mr. Chairman: Thank you very much.

Mr. Callahan: Mr. Mayor, is it?

Mr. Somerville: Mr. Somerville. I am chief administrative officer.

Mr. Callahan: I can appreciate some of your concerns as my riding is a high-growth area and every dollar is needed for looking after services.

I watched Wonderland develop. At the time, it was my impression there was a great rush to rezone the lands around Wonderland for various entities. Are the lands around there zoned for anything other than agriculture or--

Mr. Somerville: In the immediate area, no. They remain in agriculture. That was one of the commitments our council made to the ratepayers of Vaughan at that time. By making the decision on Canada's Wonderland, they were not necessarily saying they were going to open up the whole area to total urban development. The buffer areas around--and by that I mean a mile and a quarter; we are talking about a concession--are still in agricultural use, are still zoned agriculturally, notwithstanding that to the east of the park lies the community of Maple, which is a rapidly growing urban community. It will be an urban community of some 15,000 to 17,000 in the very near future.

Mr. Callahan: I understood there were a fair number of applications made to rezone for things such as hotels and the land has escalated tremendously in value, as I recall, . At least that is what I read in the newspaper.

Mr. Somerville: Canada's Wonderland itself has appropriate zoning for a hotel on the site. It has not chosen at this point to make that investment, I presume for economic reasons. I can assure you there are many applications in front of the municipality. It is constant. There is always speculation. Up to this point, the municipality has by design not removed the buffer zone or its commitment to change that designation, notwithstanding that speculators and developers are constantly submitting applications to do that.

Mr. Callahan: I note in the Wonderland brief, which I looked at rather quickly--what do they do? Do they pay for their employees' travel back and forth on the buses?

Mr. Somerville: During their operation they may pay for bus service from the Yorkdale Shopping Centre to the Wonderland site and return. This is for the majority of employees who live in Metropolitan Toronto and work at the park. The town of Vaughan also, at its total expense, has put on a bus specifically from Woodbridge and Kleinburg to the Maple site and return to get students who live in the town of Vaughan to Wonderland. That is an unsubsidized expense that--

Mr. Callahan: Does Wonderland not pay something? I saw something in there, a figure of \$600,000.

Mr. Somerville: It may in its private agreement with the Toronto Transit Commission or GO Transit. I am sorry, but I do not have all the details on that.

Mr. Callahan: I gather your fire protection and other services are only for six months of the year since it is only open six months of the year.

Mr. Somerville: Not quite. Fires can break out at any time. They have major structures and major buildings. They have their own security. Nothing precludes a fire for electrical or other reasons starting at any time during the year. Their major structures and major theatres are susceptible at any time. Granted, the operation is limited to a specific period, but as far as security and protective services are concerned, we must provide it all year around.

Mr. Callahan: Do you have any figures on the number of people, as summer jobs for young people, are employed out of the regions you are talking about?

Mr. Somerville: I will have to be honest and refer to Canada Wonderland's brief for any statistics it may have. It is my understanding that 2,500 young people, plus or minus, work at Wonderland.

Mr. Callahan: From all over?

Mr. Somerville: From all over. Basically from Ontario but from all over. As far as York region is concerned, I honestly do not know and I would not want to speculate.

Mr. Callahan: Do you have any statistics as to what affect or impact, if any, it has on the regions we are talking about in terms of visitors to Wonderland using all the facilities that would be available in these areas?

Mr. Somerville: I do not have the statistics. To be candid, we are

not at the point where the town of Vaughan has looked at that area of the economy, the tourist area, to the point of gathering those statistics.

We have in our area of Canada's Wonderland, the McMichael Canadian Collection in Kleinburg and the Kortright Centre for Conservation in Kleinburg. We get numerous visitors to the area, but they are not visitors who come and stay because in our embryonic growth we do not have the hotels, restaurants or motels for them to stay. Any visitors are coming in and going out. Therefore, it is of somewhat external economic benefit.

People who visit Wonderland come to Wonderland, stay the day and go back to wherever they are come from. They do not stay overnight in the town of Vaughan. With limited exceptions, they do not eat in the town of Vaughan. They simply pass through to get to Wonderland, McMichael and Kortright and they go back to Brampton, Mississauga and Metro Toronto. They even go north to Aurora and Newmarket where there are more established areas that have hotels and for them to stay at. The economic benefit is not so much to the town as it is to the area.

Mr. Callahan: Is that based on statistics you have or is that just an assumption?

Mr. Somerville: I think it is an informed assumption. I live in the area. I live in the immediate Kleinburg-Wonderland area. That facility is close to the administration of the town of Vaughan because we have had so many dealings with it. We believe we know it. I have to say it is an informed opinion.

16:50

Mr. Callahan: What was the impetus for the municipal people there to agree? Surely, there must have been some panacea of great gold at the end of the rainbow to have induced the municipal people to have agreed to let it be there. What was it? You must have thought about it beforehand.

Mr. Somerville: I am going to be extremely candid. I think there was a great deal of provincial pressure to locate in that area. The municipal government was very small. Vaughan was similar to a township at that time.

Mr. Callahan: I should hasten to ask you when it was built.

Mr. Somerville: It was 1981.

Mr. Callahan: It is the the former government that you are saying--

Mr. Somerville: I do not want to get into the partisan aspects of it, but I can say from personal attachment to the project that it was very much a provincial project. It was very important to the province. I believe Ontario, as a whole, has benefitted as a result of Wonderland. I suspect that the Ontario has benefitted far more than the geographic area of the town of Vaughan at this point. Maybe in the future it will change.

I think it is of interest that it is my understanding that the corporate interests behind Wonderland looked at the Niagara Falls area first. The land was available. It was farm land. It was close to Metropolitan Toronto. It was in the provincial interest to see something close to Metropolitan Toronto. The

government of the day obviously thought it was important enough to build an interchange. They helped with the approvals.

Mr. Chairman: On that point, who built the interchange?

Mr. Somerville: The province built it but I believe there was funding from Wonderland.

Mr. Chairman: I think Wonderland paid for it, if I recall correctly.

Mr. Somerville: That may be so. As far as the assessment of the facility as a whole is concerned, I must leave that to Mr. Lettner and his associates. As to the method by which Wonderland was assessed, it was unique to Ontario and other areas. There were pressures from the province and the region as well as locally on the grounds, to be quite candid, that this was good for Vaughan, good for the region and good for the province, and it is.

However, one of the areas, and we addressed it in our brief, that really helped was that the local politicians supported it. They did not have an application that was refused; they went to the board. After some very tough slugging they supported the Wonderland proposal.

Mr. Callahan: The developer went to the board with a bylaw from the municipality.

Mr. Somerville: Yes, with a bylaw from the municipality.

Mr. Callahan: The ratepayers--

Mr. Somerville: The ratepayers were opposed. The point was one of the pacification devices that the local council had was to say, "We are going to get a solid tax base out of this." As such, what is of concern to the municipality now is that the tax base is going to be eroded if this bill goes through.

Mr. Callahan: Since 1981, you obviously have got business tax from Wonderland--

Mr. Somerville: Yes.

Mr. Callahan: I presume that if they are still in business in 1986, their income and profitability must have increased. You obviously have received a larger portion of business taxes from 1981 until now.

Mr. Somerville: I must defer to Mr. Lettner because I do not know whether they are assessed on a revenue basis or on a cost-of-construction basis. I suspect it is the latter. Once the cost is there, it is in place and business taxes are a percentage of that cost. I defer to Mr. Lettner as to whether the business tax is revenue-based or cost-based.

Mr. Callahan: Can somebody tell me that?

Mr. Lettner: The business tax is based on a percentage of realty. The realty is based on a number of things. It is on market value, but when we are talking about rides, we are assessing them on costs. The cost of the rails and the cost of the supports.

Mr. Somerville: On that basis, our tax base does not increase as

their productivity or acceptability to the public increases. In other words, the better they do does not necessarily mean the better we do.

Mr. Lane: I have some difficulty being totally sympathetic at this point and maybe you can clear it up. I can sympathize with any community that is losing \$400,000 per year in taxes. Having been involved in community life for a number of years, I know it hurts to lose taxes.

At the top of page 3 you mention that because of Canada's Wonderland your area has an unprecedeted rate of growth. That rate of growth must be producing considerable taxes for you. There must be terrific job potential for students, especially for summer work. I know something of this nature coming into what is pretty much a rural area causes a lot of headaches and unforeseen administration problems. While it might be a bit difficult in the short term to see \$400,000 that you have been getting slip away, it seems to me that in the long term this unprecedeted rate of growth in the community is going to more than make up for it, and your young people have the opportunity for summer jobs.

I agree with you that it is a benefit to the province to have it there, but there is no cash relevant to my part of the province other than some of my people who come down and spend some money to see it, so the cash benefit must be in your general area. I am a little confused. I am sympathetic about the \$400,000 loss, but I see more than that coming to you from other sources that would not have been there had they not located there in the first place, because your growth would not have been there.

The other thing that I should mention is that you said you do not have the hotels to accommodate travellers so they travel on to some other place and spend their money there. I understand that Canada's Wonderland has the right to build a hotel and maybe you should be encouraging it to build it. That would keep some people there and also get you some more taxes. If it was a high-class hotel you would chalk up \$400,000 in no time.

Mr. Somerville: Mr. Lane, you talked about your own area. I am going to be a little partisan as far as my own area, Mindemoya, is concerned. I know our area too. Vaughan was not unlike our area in Manitoulin prior to this installation. I have not been living in the south long, but I see remarkable similarities between the north and that area. What has happened is a result of its specific geographic location on the fringe of Metropolitan Toronto. Through accident or whatever, Toronto is close. People are moving into Vaughan.

When I came to Vaughan in 1979, the population was 18,500 people. Today, seven and a half years later, it is roughly 75,000 people. The people who are coming in are Metro people. They are not like myself, coming from Manitoulin. They all are coming from Metro. They demand and expect a Metro board that will serve them. I am sure some of your colleagues know the name Highway 407. They know the demands on the school system, especially the separate school system. They are unprecedeted; they are phenomenal. The growth is there but there are problems associated with that growth. The school boards cannot keep up. A brand new school is built. By the time you get the provincial funding to build the school, you are opening separate schools in the town of Vaughan with nine portables. They are opening the school with nine portables.

My point is that, yes, there is unprecedeted growth but there is a cost for that growth down the road. My biggest concern as chief administrative officer for Vaughan, in a totally nonpolitical sense, is are we going to be able to afford our future? I mean that very sincerely. When you get

unprecedented growth, you get unprecedented money. When you get unprecedented money, you have a tendency, and I am speaking mainly to some of you who are or have been local politicians, not to be overly concerned at that particular time about the infrastructure you are building. As that infrastructure goes in, the schools, community centres, libraries, roads, streets and bridges all have a maintenance cost down the road. That is what worries me. I will be very candid with you. I will fight for every dollar of permanent tax assessment I can get.

17:00

I have had the resources to do economic studies. Those economic studies tell me that we have a problem down the road to pay for all this infrastructure. Let us come back to the fire situation. For argument's sake, let us say that because of Canada's Wonderland, we need one specialized fire truck. We do. An aerial ladder costs \$500,000 today. That capital cost is paid for by this unprecedented growth. I kid you not. We are getting the money from development charges. To put that truck on the road on a full platoon basis with 24-hour coverage takes 16 men. At \$40,000 a year, 16 men starts to add to the general tax base. One of the conditions is that new growth will not be paid for out of the existing tax base. That is a bit misleading. We bought the truck out of development revenues, but we have to pay the men out of current taxes.

Mr. Chairman: We are getting past the time a bit. Do you have any other questions?

Mr. Lane: You are saying that bigger is not necessarily better. Coming from an area that is starved for expansion, we would love to see some of this happen in our area. I do not think we would be complaining about the dollars that were--

Mr. Somerville: If we could get the people to--

Mr. Chairman: Mr. Callahan does not want it in Brampton, but I suggest to him that there are lots of parts of the province that would like to have another Canada's Wonderland.

Mr. Guindon: You can move it to Cornwall.

Mr. Chairman: Thank you, gentlemen. Robert, how do you say your last name?

Mr. Panizza: Panizza.

Mr. Chairman: I had it fairly close. I did not want to embarrass you.

Mr. Chairman: The next presentation is from the township of Malden. Fred Wilson, solicitor, is accompanying Carl Gibb, reeve, and Mr. Goodchild. There are supporting documents from the township of Anderdon and the township of Colchester North. Please proceed.

TOWNSHIP OF MALDEN

Mr. Wilson: Before discussing the impact of Bill 131 on the township of Malden, I will tell you a bit about the township because it finds itself in an entirely different position than does Niagara Falls or Vaughan.

It is a rural municipality located on the shores of the Detroit River and Lake Erie. It has a population of 3,100 people and a taxable assessment of \$31 million. Included within the boundaries of the township is an island lying off its shores in the Detroit River called Bob-Lo Island. On this island is an amusement park which is owned by American interests. Access to this amusement park is by excursion boat from Detroit and Gibraltar, Michigan, and Amherstburg, Ontario. This amusement park is the major taxpayer in the township, accounting for 15 per cent of the township's tax base.

Prior to annexation proceedings in 1980, Malden had one other major taxpayer which was a quarry operation. After annexation by the township of Malden, this taxpayer was lost along with almost 30 per cent of the township's tax base and 40 per cent of its population. Annexation could have been resolved without the necessity of an Ontario Municipal Board hearing had Amherstburg not insisted that Bob-Lo be included within its boundaries in the new annexed area. Because of the crucial nature of the assessment of Bob-Lo Island, the township of Malden was obliged to stand and fight. The Ontario Municipal Board in its wisdom decided that Malden would be in a very precarious position without the taxable assessment of Bob-Lo Island. Therefore, it held that Bob-Lo should remain with the township.

If Bill 131 is enacted in its present form, it will accomplish what Amherstburg could not do, and that is to take a substantial portion of the township's tax base from the tax rolls of the municipality. If this happens, the resulting tax base will be thrown back upon the shoulders of the remaining taxpayers, the majority of whom are farmers and who have enough problems as it is at the present time without the added burden of sections 2 and 3 of Bill 131.

In looking at the Bob-Lo Island Amusement Park operation for a moment, I do not have to tell you that many of the rides are very substantial in size. They have very large foundations and support systems. These rides outnumber by far the number of permanent buildings on the site, which, of course, are taxable. Even without the benefits of Bill 131, there are many rides on Bob-Lo Island that are not taxable, because they are movable. The amusement park management is currently contesting the assessment of a new roller coaster type of ride on the grounds that it is movable.

In the past year, the amusement park has constructed a 341-foot observation tower on the island with an elevator device on the exterior of the building. One branch of the provincial government has classified this structure as an elevator, but provincial assessment officials have classified it as an amusement ride, which therefore, despite its size, will make it nontaxable under the provisions of Bill 131.

Thus, it can be seen that with an amusement park it is a constant battle to maintain a proper assessment even without Bill 131. With or without Bill 131, there will continue to be problems of definition.

I do not mean to imply from anything I have said that the amusement park company is not a good corporate citizen; it is. But the fact is that the township of Malden derives very little benefit from the amusement park except for its tax contribution. The reason for this is that access to the amusement park is by boat, with the result that it is a one-day excursion for most people visiting the park, and very few people, if any, stop in the township to make purchases or stay overnight using accommodation in the township. Malden simply does not have the attractions that a place such as Niagara Falls has and that would attract people to stay there for a longer period of time. They come in by boat and they go out by boat.

Furthermore, the great majority of jobs are seasonal in nature, the park being open to the public only for approximately three months of the year. It therefore may be seen that any increase in tourism that results from Bill 131 will result in few benefits, if any, to the township. Instead, it will simply mean greater profits generated for the American owners.

Bill 131 provides for grants and attempts to make up for lost tax revenue. In the course of debate during second reading, the Honourable Mr. Nixon stated that he did not wish to make more problems than he was trying to resolve but, perhaps without realizing it, he is doing just that for the township of Malden.

As a result of its recent annexation experience, the township is very familiar with grants, since it was awarded a five-year grant to assist it with the cost of police protection after it lost so much of its assessment. It being a large rural area, annexation did not result in fewer police officers being required, with the result that the grants have now ended and police costs have remained constant and have even increased because of additional charges imposed by the Ontario Provincial Police, who police Malden township. Save for any future amendments to Bill 131, the exemption granted the amusement parks will continue forever, while grants are a short-term solution for a long-term problem for the township.

Again, the Treasurer (Mr. Nixon) said during the course of debate that he would be the last person to say it would be impossible that the provisions of Bill 131 could not be improved upon. We trust that as a result of the submissions you have heard, you will make recommendations in this regard that will, we hope, improve Bill 131.

Malden feels it should not be deprived of a substantial portion of its tax base because of the initiative of government. While the implementation of Bill 131 may result in slight changes for some municipalities, it will result in a dramatic change in the tax base of the township of Malden: \$2.3 million in taxable assessment, or seven per cent of total taxable assessment, will be lost. In terms of dollars, this is an annual tax loss of \$158,000, which is a substantial figure for a municipality of 3,100 people.

17:10

Furthermore, the township currently is involved in major capital expenditures for the replacement of old water lines at a cost in excess of \$800,000, storm drainage systems estimated at \$1,150,000 and road reconstruction estimated at \$1,130,000. It may easily be seen that these tax dollars are desperately needed to fund Malden's share of these costs.

Since Malden has such a small tax base to begin with, the impact of Bill 131 will be of much greater significance to Malden than it will be to municipalities having a much wider and more varied tax base, such as Niagara Falls. If Etobicoke cannot afford to lose the assessment of the Ontario Jockey Club, it is certain that Malden cannot afford to lose the assessment of Bob-Lo Island.

The Treasurer has said that this bill is not a matter of major concern, but that it does improve situations for the benefit of taxpayers in the municipalities. He may well be correct in so far as it applies to other municipalities in the province, but in so far as Malden is concerned, it is a matter of major concern. It does not improve the situation of either the municipality or its taxpayers. In Malden's special case, if Bill 131 is

implemented, its tax base will be seriously eroded, and the resulting tax burden will fall back on the residential taxpayers and the farmers, who can ill afford to pick up a seven per cent loss in assessment. Grants are not the solution unless they reflect a replacement of actual tax loss, are indexed for inflation and continue for a long period of time.

Because of its very unusual situation, the solution for the township of Malden appears to be that it be totally exempted from the provisions of Bill 131, and we ask that the committee so recommend.

If there are any questions, the reeve, the treasurer and I will be happy to try to answer them.

Mr. Chairman: Mr. Lettner, concerning the forecast of loss of assessment that produces \$158,000 in 1986 tax dollars, is that correct?

Mr. Lettner: We were basing it on mill rates of 22.061 for the township, 7.312 for the county and 38.792 for the school board. We worked out the loss in taxes for the rides as \$152,190. The balance that is left there would be \$156,885 for the buildings in taxes, a total tax bill of \$309,075.

I would like to take minute to explain what happens to Malden with regard to the loss in tax dollars. Malden's actual tax loss is \$49,255. The rest goes to the school board and the county. In losing the assessment, the municipality then becomes eligible for a resource equalization grant. Thus, with the phase-in provisions in the assessment and the bill, Malden's taxes in 1987, the phase-in taxes, will be \$49,255 for the tax loss and a resource equalization grant of \$13,563. It would end up with \$62,818.

The school board's portion of that, the education tax loss, is \$86,610. We have been informed by the Ministry of Education that this amount will be fully compensated in 1987 and that in subsequent years an amount of \$71,886, or 83 per cent of that loss, will be compensated for in 1987 and in every year after that through an increase in the general legislative grant. That is the tax picture for the first year. In the second year, naturally, it drops down, as the bill says.

Mr. Callahan: For how long does the resource equalization continue?

Mr. Lettner: It goes on for ever. It depends upon the assessment. It is based on assessment per capita. If the assessment is lowered, then you are eligible for a resource equalization grant.

Mr. Callahan: I gather you are saying that the net result would be that the township itself would be receiving some \$19,000 or \$20,000 more per year as a result of being put in that category. Is that right?

Mr. Lettner: According to the figures I have been given by the Ministry of Municipal Affairs, who work it out, in the first year they would be receiving \$13,563.

Mr. Callahan: More?

Mr. Lettner: That is right. In the second year, their phase-in grant for the amusement rides would drop to \$32,800, but the resource equalization grant would increase the \$14,000 to \$41,000. They would still have a shortfall of \$2,000 that year.

Mr. Callahan: How about in years thereafter?

Mr. Lettner: In year three, 1989, their phase-in grant would drop to \$16,418. The resource equalization grant, if everything remained the same as it is today in assessment, would be \$14,953.

Mr. Callahan: Rather than go through it year after year after year, does it reach a level and remain there, or does it eventually go down to nothing?

Mr. Lettner: It would depend upon the assessment. It is based on the assessment per capita in a municipality.

Mr. Callahan: Thus, if the township does better as a result of further development or whatever, this grant will be less, and so its needs might be greater because of that increased development.

Mr. Lettner: It could be less on the basis of an increase in assessment, or it could be more on the basis of a loss of assessment.

Mr. Callahan: Now go to the school board's grants. Are they continual or are they just for a phase-in period?

Mr. Lettner: No, they are continual.

Mr. Callahan: Are they based on the assessment of the township?

Mr. Lettner: That is right, yes.

Mr. Callahan: I thought there was another component to that tax. There was the--

Mr. Lettner: There is a county tax.

Mr. Callahan: Right. How does the county fare?

Mr. Lettner: There would be no grant for the county purposes, which is \$16,000.

Mr. Callahan: The reduction by passing Bill 131 is \$41,000, did you say?

Mr. Lettner: The reduction is \$49,000 for the municipality directly, a direct reduction.

Mr. Callahan: Maybe I can just ask one final question. Is this amusement park operated by an American operation?

Mr. Lettner: Yes, it is.

Mr. Callahan: I gather it is a Canadian corporation, though.

Mr. Wilson: I do not know that. I assume it is. It is owned by the American Automobile Association, Michigan branch, I think.

Mr. Callahan: And when they come to this island, you say they come from Detroit and from Amherstburg?

Mr. Wilson: And Gibraltar, Michigan. They have ferryboats that run from those points.

Mr. Callahan: There is no way they can get to your--it sounds like a pretty nice town, actually. I may move.

Mr. Wilson: The dock, with its associated parking lot, is in Malden township. That is the only facility on the mainland of Malden.

Mr. Callahan: But people from Malden go to the amusement park, obviously.

Mr. Wilson: Yes.

Mr. Callahan: You probably have people who come from the amusement park to Malden, I would think.

Mr. Wilson: Malden is chiefly a rural area. Because the people are day trippers to the island, there has been no interest on the part of anyone to develop anything that would attract people, because the traffic is simply not there. Malden is at a low growth rate since annexation.

I wonder, Mr. Chairman, whether I may ask Mr. Lettner a question, since we are not privy to some of these calculations that are being made by the Ministry of Municipal Affairs, apparently.

Mr. Chairman: Yes.

Mr. Wilson: I wonder whether you can tell me something, Mr. Lettner. Our total figures are pretty close on loss, but you have broken them down into various segments. What would be the total loss to Malden, on the basis of just the rough calculations that the Ministry of Municipal Affairs is doing now, in year four?

Mr. Lettner: In year four, it would lose approximately \$34,000 if there were no increase in assessment on the island or if there were no overall increase in resource equalization.

Mr. Wilson: That is including the township's responsibility for county and school rates and so on?

Mr. Lettner: No; that includes just the money that comes to the township.

Mr. Wilson: Would it be expected, however, to pick up--what would the grant situation be for these other areas? Would the township, in addition, have to pick up losses that had been covered with grants heretofor?

17:20

Mr. Lettner: My information from the Ministry of Education is that it would still be picking up 83 per cent.

Mr. Wilson: There would be an additional 17 per cent in there, then.

Mr. Lettner: Across the county; not to Malden.

Mr. Ward: What percentage of the total county assessment is carried by the people from your municipality? What is your equalization?

Mr. Goodchild: Very small. Three per cent.

Mr. Ward: In other words, the loss to the county that your ratepayers would pick up is three per cent of the \$89,000.

Mr. Lettner: Mr. Chairman, may I correct that? On the loss to Malden township and the part that is lost to the county, if it is three per cent, it would pick up \$480.

Mr. Goodchild: Three per cent is \$16,000. I am not totally sure on that. I was talking about equalized assessment, and I think the figure we are working on is a portion, not necessarily three per cent of a dollar figure.

May I comment on the resource equalization grant? In 1983 Malden township received a resource equalization grant of \$54,716. Because of the change in the formula that the government instituted in 1984, we received zero dollars for resource equalization grants. However, we do have what you call the revenue guarantee grant in place. Thus, in actuality, the \$15,000 or \$13,000--whatever--resource equalization grant we would get anyway in revenue guarantee. There is nothing to say that this formula will not change again so that we will go back to zero.

Mr. Chairman: Mr. Lettner, do you follow the point being made?

Mr. Lettner: To be honest, no. The resource equalization grant that was given to me by the Ministry of Municipal Affairs is based on the township of Malden in the year 1987 losing the assessment on amusement rides, the foundations and so on. In 1987 it would be \$13,563 if everything remained the same. If Bob-Lo Island did not increase its buildings or anything else in 1988, it would be \$14,241.

Mr. Goodchild: At the present time, in 1986, we have a zero resource equalization grant, but we have a revenue guarantee of \$34,187. That revenue guarantee would just reduce by \$13,000 or \$14,000, so that we are not gaining anything.

Mr. Lettner: That has not been my instruction. Municipal Affairs is not talking about the revenue guarantee, it is talking about increasing the grants by \$13,563. I am going only by what I receive from Municipal Affairs.

Mr. Goodchild: I go only by what is actual. In 1987, when it comes along for budgeting and for calculating the grants, we just got the form the other day and we will be having a seminar on it very shortly, but we have nothing to say that the present grant structure will remain the same, and on top of that you will receive this. As far as I am concerned, it is a formula worked out on the basis of assessment, population, etc., and the grants pop out. If we are going to be receiving something special, special consideration--

Mr. Lettner: It is not my understanding that it is special consideration; it is available because the assessment in Malden township will drop below. At the present time, Malden township is not eligible for resource equalization grants with its assessment picture. When and if it loses the assessment on amusement rides, then it will become eligible for this grant over and above anything else it receives. That is exactly what I got from the Ministry of Municipal Affairs. I have to believe that it is working with pretty accurate figures.

Mr. Goodchild: I am not arguing that point, Mr. Lettner. I am just stating that we have a revenue guarantee built in. That is the bottom line. When you calculate all of the grants, you will get the same as you did last year, plus whatever the percentage increase is for 1986, or in this case, 1987.

Mr. Lettner: I cannot shed any more light on it, other than what I have received.

Mr. Chairman: If the legislation were to stay as it is, you would like to have an assurance from Mr. Lettner that what he is talking about is not in addition to what you currently have.

Mr. Goodchild: We cannot live with the short-term compensating grant formula that was offered--a three-year period. We know what will happen in year 2. In year 3 and year 4, we know exactly what will happen.

Mr. Wilson: This highlights what our problem is: the grants are so uncertain, we do not know what they are going to be. A small municipality with not much hope for growth just cannot afford to lose the tax dollars. We are left with not knowing what the grants are, how long they will be in place, how they will be based or what the net effect will be to a municipality, whereas now the tax situation is certain.

Mr. Goodchild: I can give you a copy of the budget figures for 1982, 1983, 1984, and also for 1984, 1985, 1986, which reflects the loss of the resource equalization grant.

Mr. Callahan: This may be a silly question: Do they pay in United States or Canadian dollars at this amusement park?

Mr. Wilson: Employees?

Mr. Callahan: Yes.

Mr. Goodchild: I would assume Canadian dollars. They are Canadian employees.

Mr. Callahan: When you go on a ride or whatever, you are using Canadian dollars.

Mr. Wilson: A fair exchange rate.

Mr. Callahan: What do you mean?

Mr. Wilson: I have found that Canadian prices are substantially higher than their equivalent in American.

Mr. Goodchild: In my case, I bought a season's pass; you can buy a season's pass for roughly \$30 and you can go over every day of the week in the summer for that amount. It is basically for the local area. They are not a big tourist attraction, such as Niagara Falls, Marineland, or Disneyland in the US.

Mr. Callahan: Who are they owned by? Is it Taft Broadcasting Co.?

Mr. Wilson: The Michigan branch of the triple A--American Automobile Association.

Mr. Callahan: Oh, yes, you said that.

Mr. Goodchild: They just bought it two years ago. They approached us with a major development proposal over a five-year period. It was geared to whether or not they made a dollar each year. They handled it; they have done really well. They have improved and are continuing to develop and improve the island. If you compare it to any major industry in any municipality, in our case they represent 15 per cent of our tax base.

Mr. Callahan: Do they own the whole island?

Mr. Goodchild: No, there are a few cottages.

Mr. Callahan: But they own a substantial portion at this time?

Mr. Goodchild: Yes, more than 90 per cent.

Mr. Chairman: Thank you very much, gentlemen. If you want to leave the information that you had, please do.

Mr. Mancini: I hope you guys took good care of my constituents while I was out.

Mr. Chairman: It was nice of you to drop in. We will hear from you next week, no doubt.

The next presentation is from the federation of caisses populaires. Mr. Alie and others, please introduce yourselves.

17:30

LA FEDERATION DES CAISSES POPULAIRES DE L'ONTARIO INC.

Mr. Alie: Mr. Chairman, Mr. Frenette is the general manager of the federation. First of all, I would like to thank you for giving us the opportunity to appear in front of the committee to present the case of the caisses populaires movement. We have copies of our brief but, unfortunately, it is in French so maybe you will have to wait for the English version later on. I will work from the French version and I will try to give you as much information as you require.

The federation speaks on behalf of 54 caisses in Ontario with about 160,000 members. The total assets of the Caisses Populaires de l'Ontario are about \$1 billion.

There are two subjects we would like to address. The business tax, first of all, and the difference between the caisses populaires and any other commercial business. This business tax could not come at a more untimely period in the movement's history. As you know, the Ministry of Financial Institutions came up with a regulation last year requesting that all caisses populaires and credit unions have a five per cent reserve by 1995. At this time, the reserve in our movement is 1.86 per cent, so we still have a long way to go before we get to the five per cent reserve.

As you are aware in January, 1983, the Supreme Court decided that the caisses populaires and credit unions were not businesses in the sense of "business."

At the same time as this decision came down from the Supreme Court, the federation had one of our first orientation congresses and our membership

revised the real base of our movement. The caisses populaires in Ontario or in North America were founded by Alphonse Desjardins, the father of all the credit unions and the caisses populaires in North America. The basic idea was that they should help financially the members of the caisses populaires and should also help in the cultural and the social betterment of the members. It was more so in Ontario than in any other place because we are a very small minority and the caisses populaires operate strictly in French. We could easily say that if the caisses populaires did not exist in Ontario the way they do, the French culture would not be where it is now.

We are represented in about 15 communities where there is no other financial institution and the caisse populaire is the only organization keeping the social and cultural roles going together.

Every year, almost all caisses come out with not only financial statements but also with a social audit statement and the caisses are very proud of the role they have been playing in the community.

For instance, we in the federation at the provincial level have been sponsoring an international contest for the youth in the schools and during the last couple of years we had more than 15,000 francophones participating in these international contests and the total cost to our federation is more than \$50,000 per year.

We have basically all of the francophone schools in Ontario participating in this, which shows the social and cultural role we have been playing.

We also have caisses populaires or caisses scolaires within schools. As well, we have what we may call a training caisse. On a more local basis, for instance, we have a caisse in Ottawa where there is a foundation that distributes \$20,000 annually for Franco-Ontarians with a special need in education, whether they are mentally retarded or very brilliant, more than average or whatever, but they have a very unique need.

We have one in Niagara Falls. Every year it puts on a very large show of Franco-Ontarian singers and artistes. In Sudbury, the caisses use most of their excess for a home for the aged, where they are able to live close to their community and parish, and that is the only francophone residence for the aged. We have lots of examples; all the caisses are filling a very important social and cultural role. We could go on for ever.

I have to translate as I go. In 1984, when we had our orientation congress, we evaluated all our roles and the bylaws of the caisses, and the caisse members realized that we had to have within our bylaws some provisions so that we really prove and live by the basic reason we exist. Now the caisses have to have this identified in their own bylaws. The francophone and sociocultural role of the caisse is equally as important as being a financial co-operative.

Every time we get new members, we have to tell them they will belong to a francophone organization so they know before they put in their share capital. If they like it, okay, and if not, they know at that time.

If you want to know the difference between the caisses populaires and the banking institutions, all you have to do is to go back to the Credit Unions and Caisse Populaires Act. You will find we have so many restrictions and so many things the caisses cannot do you are almost talking about a

different kind of animal. Therefore, it would be most unfair to classify those two institutions as equal.

As you are probably aware, the caisses are owned by members and each member has a vote. The Ministry of Financial Institutions is now requesting a higher level of reserves, so we have no way of returning excess money, and the assets or the returned earnings of the caisse do not increase the members' share, contrary to other financial institution. If you have a \$100 share in an institution and it is earning well, then your share is worth \$200.

In the caisses, your share may be worth \$5, but if you were to dissolve a caisse that has a \$2-million asset reserve on retained earnings, you could not spread that money around. It has to go back to the government or whatever. Again, that is a basic difference between the caisse and any kind of capitalist financial institution.

17:40

With all these things, I think it would be most unfair to consider the tax issue to be the same as for any other financial institution. It is funny too in a sense--well, not funny--but at the same time as the Ministry of Financial Institutions came out with its Program for Change, it mentioned that the ministry would see what it could do, as far as income tax is concerned, to improve the bottom line of the caisses populaires so they could get the reserve faster, but that very same year it is coming up with a business tax. It looks as if the left hand does not know what the right hand is doing. It is the most inappropriate time in our life, if ever there could be an appropriate time to charge business tax, which I doubt very much, but the timing could not be worse.

In December 1985, the Minister of Financial Institutions (Mr. Kwinter) requested the movement to come up with a solution to try to solve the problem within the caisses populaires and credit union movement. Also, the movement together, all of the groups representing \$7.5 billion in assets, recommended that the minister do everything he possibly could to try to lower the income tax for the caisses populaires to make sure they build reserve faster.

Again, we cannot stress the need at least to delay it. There should be time to assess the business tax, but if worst comes to worst and you feel that the co-op movement or the caisses populaires should be taxed, we at least should not be taxed until we have attained the five per cent reserve as required by the Ministry of Financial Institutions, which has a target date of 1995. At that time or any other time, we want to make sure the movement continues to exist.

We do not have to prove to you the need for the movement to keep on existing. I think everybody knows the caisses populaires and the credit unions and what they have been doing in the past. I think we should stress it together and make sure we get this movement as viable as soon as we possibly can. As I have said, the caisses populaires exist in about 15 communities in Ontario as the only small financial institutions for people to cash their cheques. Some of these caisses populaires exist only for that, to cash unemployment cheques, family allowance cheques, etc.

Basically, I want to stress these things. If you have any questions, I will be pleased to answer.

Mr. Chairman: Thank you very much. Are there any questions? Mr. Lettner, do you have any comments you wish to make?

Mr. Lettner: Not at this time, Mr. Chairman.

Mr. Frenette: May I make a comment?

Mr. Chairman: Yes.

Mr. Frenette: We feel it is totally unjust to have a business tax for credit unions. For caisses populaires, we feel it is not only unjust but also illogical because of the totally different raison d'être of the caisses. Our financial raison d'être is only part, and in some cases it is not even 50 per cent of the raison d'être. The sociocultural raison d'être of the caisses in many cases is more important than the financial part of it.

Also, it is very important that we stress the reserve part that Mr. Alie mentioned. The law forced the banks and trust companies to have the percentage of reserve right from day one, but in our case the Ontario government failed to ask for a percentage of reserve until last year.

Mr. Alie: Seventy-three years later.

Mr. Frenette: Yes. Our movement has been in operation for 72 years and the Ontario government never thought to ask for a percentage of reserve. Now all of a sudden we have to have, zoom, five per cent in just so many years, while the other financial institutions had built their reserve when they were very small and growing. Today we have \$1 billion in assets. We have to have that five per cent reserve and we have eight years left to do it. It is a hell of a task.

Mr. Epp: Is that a proposal?

Mr. Alie: The five per cent proposal was announced in August 1985.

Mr. Epp: It is in effect right now?

Mr. Frenette: It started after January 1.

Mr. Alie: They start everybody at the same place. If one caisse had a three per cent reserve last year and another had half of one per cent, the one with three per cent does not wait for the other one for six years. It starts at three and still has to increase that reserve by the same percentage every year just the same.

There is a schedule. If the caisse is not able to meet the reserve requirements of the depositor year, it cannot give dividends, and there are many things it cannot do. It is very strict. We are talking about roughly \$200,000 in business tax for the caisses populaires in 1987.

Mr. Lane: As I remember some of the submissions from the credit unions, I believe some of the answers Mr. Lettner provided them would assist these gentlemen somewhat. They were not here obviously. It seems to me that you are raising much the same point as some of the smaller credit unions did.

Mr. Frenette: Yes. We are very different in the sense that we feel our cultural role is much larger than that of the credit unions.

Mr. Lane: You mentioned an accommodation for seniors in Sudbury, I believe. You sponsor those kinds of things?

Mr. Alie: Yes. The credit unions do not have the same social and the cultural role. Perhaps they have the social role but they do not have the cultural role that the caisses have. Our *raison d'être* from day one has been to foster the French language. That is not an issue with the credit unions. It is the same for the caisses populaires in Quebec. The cultural language is not an issue with them.

Our role is very similar to that of the caisses populaires in Manitoba or New Brunswick or perhaps the credit unions in Quebec, for instance. They also have a role, a place where people meet all the time. The credit union has a role, but basically it falls under the same act. The latter consideration is the same for us as it is for them, of course.

Mr. Frenette: A good example is Hanmer, just outside of Sudbury. A few years ago, they had no doctor who could speak French, so the caisse populaire went to Quebec, hired two doctors, brought them to Hanmer and built them offices. A year later, they brought a dentist over. Now they have a pharmacy. They built a beautiful medical centre to make sure that the francophone committee of Hanmer could get service in French. The government did not have to do that; the caisse populaire did it. That is not the *raison d'être* of a bank.

In the Niagara Peninsula, because of the large influence of American media, the caisses populaires were bringing in francophone artists on a regular basis. They were financially sponsoring Ontario francophone artists but also were bringing in francophone artists from Quebec to counteract the influence of the American TV we were getting from Buffalo all the time.

We could use our 54 caisses and give you example after example. Those are things credit unions do not have to be concerned about. Everything that was said for the credit unions applies to us, and we totally support their position, but there is that big factor on top of that.

Mr. Lane: There is no question in my mind--and I am sure everybody will agree--that you do a tremendous job for a lot of the small communities in northern Ontario that would have to do without a good many services you people provide for them. I am very sympathetic to anything we can do to make life easier for you; that is for sure.

Mr. Frenette: Many of the caisses populaires in northern Ontario, eastern Ontario and other areas could not survive on their own, financially speaking, strictly business-wise.

Mr. Chairman: How many are there?

Mr. Alie: There are 65 in Ontario. There are two groups. We are representing 54 caisses with about 85 per cent of the assets, or about \$900 million. There is another smaller federation that has 11 caisses with \$100 million in assets.

Mr. Chairman: What percentage of the assets do you represent?

Mr. Alie: We are representing \$900 million of the \$1 billion. To it is roughly 90 per cent--85 per cent or 88 per cent.

Mr. Frenette: Our group represents 90 per cent of the caisse populaire movement. We represent 12 per cent of the total credit union-caisse populaire movement in Ontario.

Mr. Chairman: Are there any further comments or questions? Thank you very much, gentlemen, and thank you for translating it for me, in any event. Maybe the others could have understood you, but I must regretfully admit I could not have understood you if you had done it in French.

Mr. Frenette: Thank you.

Mr. Chairman: I want to read into the record the other submissions that were in our file today. There was one from the Ontario Jockey Club; one from Weir and Foulds, which was exhibit 23; one from Canada's Wonderland; and one from the Tilbury Golf and Curling Club.

There is some question of how we will proceed next week. Unfortunately, we have only one member of the committee here to discuss it with and that probably is not enough. We will either discuss how we proceed at the first of the meeting next week or in consultation with a member of each of the caucuses prior to next Thursday. If we need any special motions in the House, we can suggest to the government House leader that those might be passed.

The committee adjourned at 5:52 p.m.

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STANDING COMMITTEE ON GENERAL GOVERNMENT

ASSESSMENT AMENDMENT ACT

THURSDAY, DECEMBER 11, 1986



STANDING COMMITTEE ON GENERAL GOVERNMENT

CHAIRMAN: McCague, G. R. (Dufferin-Simcoe PC)
Fontaine, R., (Cochrane North L)
Grier, R. A. (Lakeshore NDP)
Guindon, L. B. (Cornwall PC)
Henderson, D. J. (Humber L)
Lane, J. G. (Algoma-Manitoulin PC)
McKessock, R. (Grey L)
Pollock, J. (Hastings-Peterborough PC)
Sargent, E. C. (Grey-Bruce L)
Sterling, N. W. (Carleton-Grenville PC)
Swart, M. L. (Welland-Thorold NDP)

Substitution:

Bossy, M. L. (Chatham-Kent L) for Mr. McKessock

Also taking part:

Epp, H. A., Parliamentary Assistant to the Treasurer (Waterloo North L)

Clerk: Deller, D.

Staff:

Fader, J. A., Deputy Senior Legislative Counsel

Witnesses:

From the Ministry of Revenue:

Lettner, W. J., Assistant Deputy Minister, Property Assessment Program
Patterson, E., Director, Tax Appeals Branch

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday, December 11, 1986

The committee met at 10:09 a.m. in room 228.

ASSESSMENT AMENDMENT ACT
(continued)

Resuming consideration of Bill 131, An Act to amend the Assessment Act.

Mr. Chairman: I call the committee to order. It would be great to finish our clause-by-clause consideration of this bill this morning; but if we do not, we will carry on this afternoon.

We will commence clause-by-clause consideration of Bill 131. You have before you a couple of additional exhibits, one from Amherstburg and one from Colchester South. You have also been given a copy of the letter that was sent to me yesterday by the Minister of Revenue (Mr. Nixon). I think you have all seen that and have had a chance to look at it. Some changes are recommended by the ministry.

We also have a letter we have just received regarding the section of the bill that has to do with the Association of Canadian Distillers. I presume we can leave that until we get to that section of the bill.

Clerk of the Committee: They do not have copies yet.

Mr. Chairman: You do not have copies yet? I have one here.

Clerk of the Committee: They are coming.

Mr. Chairman: They will be along shortly.

We have heard extensive representations from various interested groups, and now we can commence clause-by-clause. We have several in the audience who have spoken to us before on various aspects of the bill. I would just remind those present that in clause-by-clause consideration, unfortunately, there is no opportunity for those in the audience to speak again.

We will commence with section 1 of the bill.

Mr. Sterling: Before we commence on the sections, perhaps legislative counsel can clarify this. If an amendment is made to the bill or if a section is deleted, are the explanatory notes automatically changed after that happens? Some of the courts have referred to those explanatory notes in order to determine the meaning of sections.

Mr. Fader: Yes, Mr. Sterling. The bill is reprinted as amended by the committee, and we change the notes accordingly so that it reflects the amended bill.

Mr. Sterling: Thank you very much.

On section 1:

Mr. Chairman: I believe we have a suggestion from the ministry on this section.

Mr. Epp: As you have indicated, Mr. Chairman, we have sent correspondence to the members with respect to section 1. As you will notice, we are suggesting that section 1 be deleted and that subsection 7(1) of the act, as set out in section 4 of the bill, be amended. In that instance, we want to strike "stock exchange, commodity exchange" and add a clause later on that would say, "operating a stock or a commodity exchange." It is not a major change. It is one that would clarify for the members of the committee what we really want to achieve. The other thing is that we want to put them in at 50 per cent as opposed to 75 per cent.

Mr. Chairman: In dealing with section 1, it is my understanding that the ministry is prepared to withdraw that section.

Mr. Epp: I understand that we cannot withdraw it. What we can do is to ask the members to vote against it and then put in the amendment.

Mr. Sterling: Do you need a motion to delete section 1, or do we just say that--

Mr. Chairman: I guess I will ask whether section 1 will carry, and if we are following the direction of the ministry, we will say no. Is that correct?

Mr. Fader: The proper procedure, Mr. Chairman, if you are asking me, is not to move that section 1 be deleted from the bill. Rather, when the question is put, "Shall section 1 stand as part of the bill?" the sense of the committee will be no, if it is to achieve Mr. Epp's purpose.

Mr. Sargent: What does this do? What does the change mean?

Mr. Fader: It takes section 1 out of the bill.

Mr. Sargent: What does that do?

Mr. Epp: The stock exchange now has an assessment of 50 per cent. It was our proposal to increase it to 75 per cent. What we are asking is that it remain at 50 per cent.

Mr. Sargent: Why?

Mr. Epp: The bill essentially, Mr. Sargent, is intended to retain the status quo in all sections. The bill is necessary because of a number of court cases in which the ministry has not been successful. As a result, we are trying to leave it at 50 per cent as opposed to raising it to 75 per cent through business assessment.

Mr. Sargent: I do not agree with that. Are you going to take a vote of the committee on that?

Mr. Epp: Mr. Sargent, it is the position of the government that this be done. That is why we are recommending it.

Mr. Sterling: I hesitate to help the government. At any rate, I think what happened has to do with the interpretation of that section. It says, "'business' includes any business activity whether or not such activity produces, or is intended to produce, a profit."

The problem was that when we had the idea of this section, together with section 4, it was to get at racetracks and a number of other kinds of businesses that had no profit motive but that are, in fact, in a commercial business and are competing with other people who are trying to make a profit. The intent of this amendment, I guess, was to not cross over into organizations such as the Canadian Standards Association and the Canadian Manufacturers' Association--I think there are something like 1,000 different organizations--which feel that if this section is left in here, they are going to get caught because, in effect, they are running a business but it is not intended for profit.

The net the Treasurer (Mr. Nixon) has cast out, according to the submissions we got, caught these other groups. It is my feeling that it was not really the intent of the Ministry of Revenue to catch them, but there is trouble with the words. Is that correct?

Mr. Lettner: Basically, yes, it is correct, Mr. Sterling. The feeling is that section 1 of the bill throws too wide a net. Everyone in Ontario who runs a trade association or anything else is alarmed that it would cover him. We have listened to--

Mr. Sargent: If it is too big a blanket, why do you not pinpoint the stock exchange?

Mr. Lettner: We are pinpointing the stock exchange, the credit unions, the caisses populaires and the racetracks under another amendment that we have circularized so that it is not throwing a wide-open net to everyone who is in a nonprofit association or a nonprofit business. We have accepted the recommendation of some of the people who appeared before us, and our own. That is another section of the bill that we are voting on.

Mr. Sargent: You are going to get at these guys, are you? The stock exchange?

Mr. Lettner: It is in there, yes.

Mr. Chairman: Mr. Sargent, do you have a copy of the bill there? There are some here if you do not have one. The amendment on the stock exchange comes in section 4 of the bill. While you can argue that section 1 has an effect on it, the amendment comes on the second page of the bill, in section 4.

Mr. Sargent: Okay.

10:20

Mr. Chairman: Shall section 1 stand as part of the bill?

All those in favour? No.

Section 1 negatived.

On section 2:

Mr. Sterling: I will read to you the part of the Treasurer's letter that talks about subsection 2(1). He indicates to the committee on page 3:

"However, if the members of the committee continue to find difficulty with the wording in subsection 2(1), rather than entertain changes to the provision"--in other words, rather than accept what some of the submissions said on changing subsection 2(1) to some other wording--"I would recommend that the committee delete subsection 2(1) for two reasons."

First, the amendment proposed by the Canadian Manufacturers' Association creates further exemptions; I think that is basically what he says there. "Second, as you are aware," in this committee, "this area of law is complex and technical," and it is difficult for us to draw an amendment that will satisfy either the ministry or the industry.

The misunderstanding of the section was best pointed out by the fact that we had both sides thinking that the amendment said two different things. We had the Association of Municipalities of Ontario come in and say that processing tanks were at last going to be taxed. We had the ministry say they were not. We had industry say, "Hey, we are worried that they are." Therefore, it is my conclusion that it would be best, in accepting the Treasurer's offer, to delete that subsection. That is basically my position at this stage.

Mr. Epp: I might add that the minister has also suggested we keep it in. However, if the committee felt it could not keep it in, then of course the second choice--not the preferable one--was that it delete the recommendation.

Mr. Sterling: I go back to the lawyer who came here for the agricultural co-operatives. He was arguing very strenuously that it had a different effect from what the Ministry of Revenue claimed it had. My conclusion was that if a lawyer who had been retained by a number of co-ops in dealing with subsection 2(1) could not understand it, how in the devil would the clerks of the various municipalities around this province be able to understand it? I would rather have no change to the law than have a new bad law.

Mr. Swart: Yes, I agree with that. My understanding is that within this committee, and I guess within the ministry itself, there is no disagreement with what one is trying to do here. We are all in agreement on that. I also have to agree that, with the present wording, the interpretation, certainly by laypeople and even by the lawyers, I am afraid, is going to open up the legislation to the assessment of processing equipment, processing tanks. That, I understand, is not the intent of this. Its intent is to maintain the status quo.

Mr. Epp: It is also our commitment to keep it that way.

Mr. Swart: Yes, that is right. But as Mr. Sterling has already said, when the lawyers and the people who have read this and studied it feel that way about it, and when even the assessment branch dares to say that some of the assessors might put that interpretation on it, it could provide real difficulties. Therefore, the second recommendation is the preferable one. I am prepared to go along with the principle of this; I think we all are. But we do have a real concern. I was troubled by it myself.

Mr. Chairman: Shall subsection 2(1) form part of the bill?

All those in favour it remaining part of the bill? It shall not form part of the bill.

Mr. Chairman: Subsection 2(2): Can Mr. Lettner or Ms. Patterson tell us what that is?

Ms. Patterson: The deletion of "other"?

Mr. Chairman: Yes.

Ms. Patterson: It seemed to be inconsistent with the other provisions of the legislation and seemed to suggest it was possible machinery and equipment might be a structure.

Mr. Swart: Now that clause 2(1)(a) is no longer in the act, is it appropriate to pass this or does it make it redundant?

Ms. Patterson: It is essentially a housekeeping amendment and it will provide some clarification with or without subsection 2(1).

Mr. Swart: With or without; okay.

Mr. Chairman: Is there any further comment? Shall subsection 2(2) form part of the bill? Carried.

Mr. Chairman: Subsection 2(3): Is there any comment?

Mr. Lane: A number of the people who came before us seemed to have had a different reading of that section. We heard pros and cons about amusement rides and so forth. Is there any any confusion out there as to the wording of that section?

Mr. Epp: As you know, the original amendment was proposed by Mr. Gregory in the House some time ago and this government has adopted it. There was concern about the impact it might have on assessment. I think many of those fears have been dealt with and allayed, and as a result, the government is proposing this change be made.

Mr. Lane: It seems to me that the town of Vaughan in its submission to us had some concern about this, did it not?

Mr. Epp: Yes, they did. This was initially proposed to deal with the concerns Marineland had in Niagara Falls. The government has proposed there be transitional grants to Vaughan as well as to Niagara Falls, although it may result in an expression of concern by Vaughan and some municipalities. I think we have dealt with those concerns to a great extent.

Mr. Chairman: Perhaps I can have the indulgence of the committee. I happen to be chairman of the committee as well as Revenue critic for our party, which is an odd combination. I would like to address the issue of Malden when we get to that on the grants in lieu of or transfer of payments or whatever you happen to do in the case of Malden, along the lines of when a park such as this forms a significant part of the assessment of a municipality that we might do slightly differently. However, I do not think it affects this section of the bill. You will recall that Marineland was happy with the amendment and so was the municipality. The township of Malden was opposed to

the amendment and we really did not hear from--what is the name of the amusement at Bob-Lo Island?

10:30

Mr. Lettner: Bob-Lo Island Amusement Park.

Mr. Chairman: As I recall, we did not hear from them. Is that correct, Mr. Lettner? We did not hear from Bob-Lo Island Amusement Park.

Mr. Lettner: No, we did not.

Mr. Chairman: Then we had the case in Vaughan where Canada's Wonderland is happy with it and Vaughan is opposed to it.

Mr. Lettner: That is correct.

Mr. Chairman: You have three different scenarios. We might want to change the wording a little in the next section to give some special consideration to a small place such as Malden because of the significant part of its assessment that it is. The ministry could address that or the Minister of Municipal Affairs (Mr. Grandmaître) could address that.

Are there any further amendments or comments on subsection 2(3)?

Mr. Sterling: I am going to propose an amendment on this. I have given the clerk a copy of the amendment. I do not know whether legislative counsel has had a chance to look at it. Basically, under the assessment program policy of the Ministry of Revenue, under industrial properties, it says, "The following should not be assessed," and it talks about pollution control equipment.

While that may be a program policy of the Ministry of Revenue, I would like to see it in the four corners of the act. In terms of a requirement by the Ministry of Revenue to build a smokestack higher or to install equipment to meet an environmental concern, I think it should be part and parcel of the policy of the government not to assess these additional structures as "machinery" to the industrial user who goes ahead and does this matter. I am proposing an amendment at this time.

I do not know whether the Ministry of Revenue has had an opportunity to look at it. I am willing to stand down the section until the end if they need a little more time to respond.

Mr. Chairman: Mr. Sterling moves that section 2(3) of the act be further amended by adding thereto the following paragraph:

"24. All machinery, equipment, plant and appliance used for the control or abatement of the emission of any contaminant into the natural environment, including the foundations upon which the machinery, equipment, plant and appliance rest; provided, however, where the machinery, equipment, plant and appliance is not used exclusively for the control or abatement of the emission of any contaminant into the natural environment, only to the extent that such machinery, equipment, plant and appliance is so used.

"(a) for the purpose of this paragraph, "contaminant" and "natural

"environment" mean contaminant and natural environment as defined in the Environmental Protection Act."

Mr. Sterling: Where somebody is ordered by the Ministry of the Environment that he has to do something, I do not think he should be assessed for that improvement to the property.

Mr. Lettner: This is the first I have seen of it, but what it will effectively do in my opinion is wipe out all the smokestacks in Ontario, including the ones in the north at Inco, Falconbridge and all the others. We do not assess now what is in that smokestack; we assess the structures that are used for that purpose. That "containment of emission of any contaminant into the natural environment" is dead against the Metals and Alloys case. The last court, the Court of Appeal, decided in the case of Metals and Alloys that putting a building around a machine, it is still a building.

This would enlarge, in my opinion and at first glance and this is all I can see of it, the exemptions of machinery and equipment to include structures and everything else. Rather than clarifying what we have tried to do in subsection 2(1), this enlarges it so that municipalities are going to lose thousands upon thousands of dollars. It is a well-known fact by everyone that we do not assess the environmental pollution control mechanisms, but we do assess the structures. At this point, I can see the large stack at Sudbury, at Inco, being exempt. I can see it with buildings because when you are talking about plant you are talking about buildings, "All machinery, equipment, plant and appliance used for the control or abatement of the emission of any contaminant...." If you are talking about subsection 2(1) being wide, this will reduce drastically industrial assessment across the province.

Mr. Sterling: I believe the amendment is intended to exempt only that portion of the smokestack which would not normally be required to exhaust the fumes and the smoke. For instance, at Inco, in the normal process it would only be the additional 100 feet--whatever it is--to allow the print of the emission to be spread over a wider area as an environmental consideration. It would not try to capture the first 200 feet--it would let off the additional 100 feet, if you know what I mean.

Mr. Lettner: With all due respect, for four days I have heard about our amendment under subsection 2(1) being a lawyer's paradise in interpretation. Looking at this, who is to decide whether the first 100 feet or the first 200 feet give it off? Any plant: "plant" in my opinion includes a building. Now we are not only going to exempt machinery and equipment used for manufacturing, but we are also going to exempt buildings. Without a lot more study of what this would do, I think the assessment department would look at--we would be prepared if this went through to lose probably millions of dollars in assessment.

Mr. Swart: I have some difficulty with that explanation, but I am not familiar enough, and perhaps I should be, with the present provisions of the act with regard to exempting equipment for pollution control. Would it be broad enough to incorporate much of what was intended to be in here? My interpretation of this would be that it is broad enough that even the walls of a building, which may stop dust, smoke and contain the noise, could be exempted under this clause. However, I would like to have an explanation of the present section that exempts environmental control measures.

Mr. Lettner: At the present time, under environmental control

measures, the inner workings in a smokestack are exempt; for instance, where they control the emission of sulphur dioxide or whatever comes out. We do not assess them. We just assess the basic structure, the chimney. We do not assess any environmental controls, but we do assess the structures that surround them.

10:40

In the Metals and Alloys case, I believe they were told they had to build a building for noise emission around this machine. The Court of Appeal--and that was the last court it went to; they were refused leave to go to the Supreme Court of Canada--ruled that it was a building and was serving a useful purpose as a building and should be assessable.

Mr. Lane: I have considerable sympathy for what my colleague is putting forward, but I also understand what Mr. Lettner is saying. Take the superstack at Sudbury, for example. The whole stack was put there to spread the contaminant over a wider area. As he has pointed out, that is a tremendous structure in itself. I think Mr. Sterling's idea was to prevent people who were caught under a control order and had to do some extension from being assessed on whatever extension was required. I think that is really what you were trying to do, Norm. However, Mr. Lettner has pointed out that this is probably much too wide. We are catching a whole lot of things Mr. Sterling did not intend to catch.

Mr. Sargent: It boggles the mind that at this time and place we should not be involved in ways to discourage the dispersion of contaminants such as those in Sudbury. I think we should make it as difficult as possible for anybody to be in that business by keeping the taxes high on smokestacks and things such as that. This is a negative approach, but you see the pollutants in the air today. If anybody is going to be part of ruining the atmosphere of millions of people, whether it is mining or whatever, we should make it as costly as possible for them to be in the business, regardless of what the hell they are mining or whatever they are doing. This it is an odd approach to take to it, but, but I used to fly over the north country a lot and for 50 miles you could see that stuff covering this part of America from that smokestack. If I had my way, I would bomb that thing and knock it down.

Mr. Chairman: It is a good job they did not give you a bomb or you would have.

Mr. Swart: We will know where to look if it goes.

Mr. Sargent: Jack makes a hell of good point when he says we are talking about millions of dollars. If anybody wants to get into the business of dispersing pollutants, they should put another million on top of it to keep them out of the business. That is how important I think it is.

Mr. Epp: I want you to understand, Mr. Sargent, that we are saying is that the implications of the amendment Mr. Sterling has put forward are far-reaching and will have a devastating effect on the assessment of municipalities across this province.

Mr. Sargent: If you do not tax.

Mr. Epp: If we were to support the amendment. That is the ministry's position. Therefore, the ministry is not in favour of the amendment Mr. Sterling has proposed. We do not want to hurt the assessment municipalities have now and have counted on for some time. Essentially, this is a status quo

bill, and we want to have this section, as proposed in the bill, supported by the committee. I hope Mr. Sterling will review his position so that we might not impose something on the municipalities that they are not prepared to accept and would be very upset about.

Mr. Sterling: You should understand that the thrust of the amendment is to encourage industries to remedy the existing environmental problems they are causing our province. It is not to encourage those companies to further poison the environment in any way, shape or form. The problem you have is that, for instance, a firm in my riding, Nitrochem, which makes ammonia and fertilizers, is ordered to put in installations worth something like \$3 million to abate a pollution problem. If that is the situation, then I would like the government to take a policy to assist those companies to meet that expense. In other words, you have the Ministry of the Environment coming in like a tough guy saying, "Clean up or ship out."

Mr. Sargent: They are wasting their time.

Mr. Sterling: The problem is that they are in a very competitive business. They have had significant layoffs in the past, and to that community they are a very, very important employer. That is a problem.

However, in view of the comments by the committee, I am not convinced that I am aware or that the ministry is aware of all of the ramifications of an amendment such as this. I would like the parliamentary assistant to ask the minister to inform us whether he can provide some guesstimate of the impact of such an amendment on the assessment rolls of the different municipalities across this province.

I do not want them to do an extensive study on it at this time, but if he could provide me in some way either some kind of impact study or an alternative amendment that would try to get the essence of what I am describing, I would appreciate that. Therefore, I would withdraw that amendment at this time, Mr. Chairman.

Mr. Pollock: I can appreciate what Mr. Sterling is saying about giving a break to companies that are trying to clean up their act and not pollute the environment. However, I was always of the opinion when we started talking about the smokestack at Sudbury that I would not want to blow it down, but I understand that some mighty good arguments have been made about whether it should ever have been built in the first place. It is causing acid rain all over southern Ontario.

Mr. Guindon: I would like to add to what my colleagues have already said that I am sympathetic to this amendment because I come from Cornwall, where the unemployment rate is more than 12 per cent. All we are doing with this amendment, to me, is exchanging tax assessment for clean air. If we are going to try to clean up the air, we should be prepared on our side to say, "We are going to give it our best."

That is all I want to say. I am sympathetic because it is going to help the companies remain competitive. If our companies are under control of some type or are regulated because of emissions, then it is pretty tough for them to stay competitive with the rest of the world in certain markets.

Mr. Epp: Mr. Sterling has asked for a commitment with respect to trying to ascertain what financial implications that would have, and I am prepared to give him that commitment--

Mr. Sterling: Thank you very much.

Mr. Epp: --if he is prepared to stand this down. I do not have anything further to that.

Mr. Sterling: I have withdrawn the amendment.

Mr. Chairman: It has been withdrawn. We are trying to determine whether the amendment would have been in order in any event. I would contend, without having had the benefit of talking to the desk in the House, that you could not have put in a paragraph 24, but you might have included some kind of environmental exemption in paragraph 23 along with roller coasters, et al. But I am not sure on that point, and we will find out for our information.

Shall subsection 2(3) form part of the bill? Carried.

Section 2, as amended, agreed to.

10:50

On section 3:

Mr. Chairman: Mr. Epp, with your indulgence, I would like to speak to section 3 of the bill, grants by the Minister of Municipal Affairs. It seems to me the situation in the township of Malden is somewhat different from that in the other two cases we had before us, Marineland and Canada's Wonderland. Would the ministry consent to including in that clause something such as this: Where the exemption was greater than 10 per cent of the assessment, the ministry would review the situation at the end of three years; and if there was still a significant tax loss, the Minister of Municipal Affairs would make further grants?

Mr. Epp: I have no difficulty with agreeing that we should review it. The problem I have is with committing the Ministry of Municipal Affairs to providing additional grants, since I am not in that ministry. I have no difficulty with recommending to the minister both the review and the possibility of giving additional grants.

Mr. Chairman: In answer to that, section 3 is permissive. It says, "In each of the years 1987, 1988 and 1989, the Minister of Municipal Affairs may make grants, upon such terms and conditions as the minister considers necessary." That is permissive; you are not directing the Minister of Municipal Affairs to do anything. In fairness to the situation that Malden finds itself in, if this section included something such as the wording I was suggesting, it would at least be a signal that where the assessment is greater than 10 per cent, at least they have another kick at it.

Mr. Epp: As you know, we have discussed this with Malden and we have made important concessions there. I will ask Mr. Lettner to elaborate on that.

Mr. Lettner: I do not have the figures with me, but we went back to Municipal Affairs with the fact that the grant, in our opinion, was probably not sufficient for Malden's case. Municipal Affairs has increased the grant to Malden. I think it will look at Malden township as a special case in 1987 and each and every year.

Mr. Sargent: Where is Malden township?

Mr. Lettner: Malden township is a basically rural-urban township that lost the greater part of its assessment to the town of Amherstburg in an annexation. With this exemption of amusement rides, it has been losing more, and it needs a grant sufficient to cover it off. It does not get the spinoff benefits from Bob-Lo Island that other municipalities such as Vaughan and Niagara Falls get, because the people get on a ferry to cross to the island, come back, get in their cars and go home.

Mr. Epp: I would say we are prepared and we have sat down with the ministry; personnel have met and have had discussions with some people from Malden. Its concerns have been taken seriously, and we have met with the member for that area. Everything will be done to allay their fears with respect to their loss in assessment. However, because this legislation has provincial implications, it was primarily, as I indicated earlier, for Niagara Falls. Malden's particular concerns will be dealt with, I think, in a fair and equitable manner.

Mr. Chairman: Maybe Mr. Lane has a question.

Mr. Lane: We are talking about one municipality that obviously should be considered, yet from my reading this portion of the bill, it seems it is broad enough to apply to any municipality that should find itself in that predicament. If it said, "shall make grants," that would be better; but it says, "may make grants." It does not direct the minister to make grants; it says he may do so, and I am sure there are other municipalities that could find themselves in the same situation.

Mr. Epp: I want to add one thing here. Although we are dealing with three years here--1987, 1988 and 1989--it is not exclusive. It does not prevent the ministry from dealing with this thing in future years, but we specifically wanted to lay out this three-year plan here. It is not exclusive and it does not prevent us from doing something additional in 1990 and so forth.

Mr. Chairman: Mr. Lane, I would guess that you will not find a situation similar to that of Malden elsewhere in the province. I understand it is about 15 per cent of their assessment.

Mr. Lettner: No; it is less than that. Actually, the loss to Malden is \$49,000 in taxes, and I think that is less than 15 per cent. Right off the top of my head, I cannot--

Mr. Chairman: Malden came in, and I know they are concerned. They will know the matter was raised here. I would not mind seeing you write a comfort letter in regard to Malden specifically, which they would have. Would that be agreeable?

Mr. Epp: That would be agreeable.

Mr. Chairman: It is just that it is quite a blow for them in comparison to what it does in Vaughan or what it does in Niagara Falls, for instance; but we have the Niagara Falls agreement.

Shall section 3 form part of the bill?

Section 3 agreed to.

On section 4:

Mr. Chairman: Section 4. What do we do here, Debbie? Do we approve subsection 4(1) down as far as "follows"? How do you handle that?

Interjection.

Mr. Chairman: Are there any amendments, then, to section 4? Is there any problem with subsection 4(1) until we get down as far as "follows"? Then clause 4(1)(a). Mr. Sterling, before we go into the section, I wonder whether I could read the letter that came to my attention this morning from the Honourable Mr. Nixon, the Minister of Revenue:

"The Association of Canadian Distillers has made representations to both this committee, the Ministry of Revenue, and the Ministry of Municipal Affairs. I am sympathetic to and supportive of the association's concerns regarding the present 140 per cent business rate applicable to distillers.

"Accordingly, I have instructed ministry staff to undertake a study: (1) to evaluate a mechanism to implement reductions of the present business rate of distilleries; (2) to evaluate the impact of the tax laws within the affected municipalities; (3) to provide a satisfactory compensation arrangement for those municipalities; and (4) such other matters that are deemed necessary.

"On receipt of that report, I would undertake to provide same to this committee and/or the House for review and recommendation.

"I would like to thank you and the other members of the standing committee on general government for your thoughtful consideration and review of Bill 131."

Signed by Robert F. Nixon, the Minister of Revenue.

11:00

Mr. Sterling: If members recall the representation made by the Canadian distillers' association, it was pointed out to the committee that business tax was assessed to distillers at a rate of 140 per cent, whereas competing industries producing alcohol in various forms paid somewhere between 60 per cent and 75 per cent in business tax. There has not been an explanation for it other than that back in 1904, when the act was struck, these fellows were doing a lot better than they are now in their business. I raised at that time, if members recall, the fact that I did not quite understand how under our Charter of Rights an act could seem to be so discriminatory towards a segment of business while not being consistent with the other segments, the breweries and the wineries.

I appreciate the letter that the Minister of Revenue has written. However, there is no time frame involved in the letter, and my experience in government has been that matters seem to be studied for long periods before action takes place. I do not know whether other long-standing members, such as Mr. Sargent and Mr. Lane--you do not usually get an issue back on the table. Therefore, it has always been my role as a legislator, when I see something I consider unfair, to seize upon that opportunity, fix it then and not wait for something to happen in the future. Therefore, I have proposed an amendment to clause 4(1)(a).

May I explain what these figures mean? This is for the business taxation for various years. The idea is to phase it from 140 per cent to 75 percent over six or seven years, to allow municipalities to adjust to the loss they might experience because of the reduction of the rate.

Mr. Chairman: Mr. Sterling moves that clause 7(1)(a) of the act, as set out in section 4 of the bill, be struck out and the following substituted therefor:

"(a) The business of a distiller for a sum equal to 135 per cent for taxation in the year 1987, 125 per cent for taxation in the year 1988, 115 per cent for taxation in the year 1989, 105 per cent for taxation in the year 1990, 95 per cent for taxation in the year 1991, 85 per cent for taxation in the year 1992 and 75 per cent for taxation in each year thereafter, of the value of the land so occupied or used, exclusive of any portion of the land occupied or used for the distilling of alcohol solely for industrial purposes and for a sum equal to 75 per cent of the assessed value as to such last-mentioned portion."

Mr. Sterling: I guess the section was originally drafted because there were two different levels of business taxation on a distillery. The office building would presumably have a business tax of 75 per cent, whereas the distillery towers, etc., would be taxed at a higher rate. That is the amendment I put forward.

Mr. Sargent: May I interrupt?

Mr. Sterling: Yes.

Mr. Sargent: What does the Treasurer recommend?

Mr. Epp: We have a letter that has been distributed to members of the committee. The chairman just read it. I think the second paragraph is the important one here. He says, "I have instructed ministry staff to undertake a study: (1) to evaluate a mechanism to implement reductions of the present rate of distilleries; (2) to evaluate the impact of the tax loss within the affected municipalities; (3) to provide a satisfactory compensation arrangement for those municipalities; and (4) such other matters that are deemed necessary."

Mr. Sterling has raised the point that there is no time commitment with regard to those four points. I am prepared on behalf of the ministry to give a commitment that we will deal with this within the next year. I understand his concern that it not be dragged on and I am sympathetic to it; therefore, I am prepared to give that commitment. The other thing is that we have distributed to every committee member a sheet showing the various tax losses to the municipalities. I am sorry Mr. Pollock is not here because the municipality that would be most affected by such an amendment is the township of Maidstone, which is within his constituency.

Mr. Sterling: I think his is Thurlow. Is that not correct, Mr. Lettner?

Mr. Epp: Yes, Thurlow. Pardon me. It is probably the third largest and I am not sure where the township of Maidstone is or whose constituency it is in.

Mr. Chairman: I think it is Windsor.

Mr. Epp: Windsor, okay. I am not sure whose riding that is.

There are some municipalities that, as you know, are very adversely affected. I know my own municipality is affected, although not as radically. Both the city of Waterloo and the township of Woolwich are affected. The ministry would like study this and come back within a year--that is a maximum time, not a minimum one--to bring back a report with respect to this matter and how it should be phased in after discussions with the municipalities and the industry.

Mr. Sargent: Mr. Sterling's scheduling of a 10-year tax plan in his amendment, going down 10 years and then pegging a tax. Is that not unusual?

Mr. Lettner: It is unusual. In 1968, there was a phase-in of the business assessment but it was on a three-year phase-in, to my knowledge. I do not know of a 10-year phase-in the 30 some years I have been in assessment.

Mr. Sterling: The reason for giving a longer time is to give the municipalities a chance to adjust as time goes on. If you do not put it in legislation, however, and it is done just as a matter of regulation or policy, there is no guarantee equity will be achieved in reaching the final goal of 75 per cent, if that is what this committee agreed to previously. With regard to whether a study is needed, I argue it is not needed, further than what we have in front of us.

Mr. Sargent: We could be looking at a \$50-million bill there.

Mr. Sterling: No, it is not. As it was given to us by the distillers' association, it is basically \$3.5 million across Ontario. We can look at the sheet provided to us by the Ministry of Revenue and see it would affect the township of Maidstone the most. However, if you take it over the 10-year basis, the maximum, even for Maidstone, would probably be a 1.5 per cent drop over a period of six or seven years. I am just using 1.5 per cent as an approximate figure and am trying to do a quick calculation in my head.

Therefore, we have the figures in front of us. I have seen other figures that are roughly equivalent to this matter. If we want to address an inequity, why not address it? Why not deal with it? Why do you have to continue to study these kinds of matters? It was my understanding that Mr. Swart felt there was a problem with the equity of--

11:10

Mr. Sargent: I cannot recall they did such a good selling job as this.

Interjection: Who did?

Mr. Sargent: The distillers. I did not think they could even sell me that much.

Mr. Sterling: Perhaps you and I have paid them too much in the past, and--

Mr. Sargent: No comment.

Mr. Sterling: Therefore, I would like to put forward the amendment and urge the committee to support the amendment.

Mr. Epp: I remind the committee of the concern expressed by members here with respect to Malden township and with respect to the amusement park. That is a loss we have dealt with and some of the losses that are going to be experienced here are probably in excess of what they are experiencing in Malden. We have tried to deal with this. I suggest we look at the impact this is going to have and at the possibility of grants and so forth. We need time to study it.

I might say, Mr. Sterling, that I have expressed this concern over a number of years to the ministry before we ever had the opportunity of forming the government. The Seagram company has a very large distillery in my constituency and has a significant impact in Waterloo and in the township of Woolwich. In fact, as short a time ago as last Friday I met with somebody from that company to discuss this thing because they wanted to discuss it.

We are serious about this. We have a commitment by the minister that has been read into the record. You have my own commitment on behalf of the ministry that we will come back with a report within a year--we hope it will be a lot shorter than that--after having discussions with the industry and with the municipalities on this matter. If you will bear with us, we will do what we can to alleviate the extra burdens these companies experience with regard to the 140 per cent assessment. I feel completely uneasy with the size of that and am sympathetic to what you want. If you will let us do that, we will do the best we can with respect to it. Along the way, we will consult you on it so that you know what is going on.

Mr. Bossy: I have a short comment. I was looking at those figures and I can see the decisions we would be making on this right now would have tremendous implications as far as municipalities are concerned. Regardless of where the tax comes from, there is a certain amount of money that has to be generated in a municipality. For them to offset the kind of loss indicated here--I was not on the committee and I do not know how much has transpired in regard to the municipalities themselves being informed of this proposed change.

Granted, the tax being paid is really paid by all who utilize the products of those companies. At the same time, it protects some jobs, but then you turn around and have to assess the same people that are working there for additional tax for that municipality to offset the operating costs. Based on this I can see that the big move to get down to 75 per cent is a very sensitive issue. I think that has been handled with much care. The municipalities should be directly involved. How much communication has transpired with the municipalities affected or that would be affected?

Mr. Lettner: There has been no communication with the municipalities. I do not think they even know it is being addressed here except, as Mr. Epp said, for the city of Waterloo. He was talking to some people there. We have not addressed it. It would be one of our proposals that if we took the time to study the ramifications, we would have to look at what happens to the resource equalization grants and the general legislative grants with regard to education and also let the municipality know it was coming.

That is what we would be doing in the next while, after we found out exactly their position. Every time they lose money, as in the case of Malden township, it changes their grant picture with the Ministry of Municipal

Affairs. We would have to do a study on each of these municipalities, especially the ones hardest hit.

Mr. Lane: Mr. Sterling has brought a couple of matters to the committee that I mostly agree with. Generally, when a new bill is passed or a present bill is amended, it is for a period of time. We do not often get a chance to look at it again for a number of years. Therefore, if there are any shortcomings in the bill at this point, we should probably try to correct them.

What Mr. Sterling has proposed seems pretty reasonable. On the other hand, I can see the problem the government would have with this committee making a major change to the bill that has not been talked about to this point. No warning has been given to the municipalities involved that this would even be discussed at this point. I think it would probably be premature for us to do this. With a letter from the minister and a statement from the parliamentary assistant promising to take action within a year, we have a bit more than would normally be the case under these same conditions.

Mr. Sargent: I say kindly to Mr. Sterling that he has taken a very exhaustive and intelligent approach, but I think if we passed this there would be a monument in every distillery around the province with his picture on it.

Mr. Chairman: If you vote with him, they will put yours in every other one.

Mr. Sargent: Mr. Epp ran a city for a long time and I ran a city for 15 years. We would be doing a disservice to the municipalities with a thing such as this. There are very few municipalities where tax rates are coming down; they are all going up. They scratch for new sources of revenue all the time. If we shoot with a shotgun, we are going to make a lot of people unhappy at the municipal level. I do not want to be part of burdening future years with loss of revenue.

Mr. Sterling: When you become a member of the Legislative Assembly, you hear the arguments time and time again why we should not do something at a particular time. I point out to the members of the committee that the representation by the Association of Canadian Distillers was made about three weeks ago. The Ministry of Revenue was sitting here, along with the parliamentary assistant, three weeks ago. At that time, Mr. Swart clearly indicated his support for an amendment. I clearly stated our support for an amendment.

There is an inequity here; 140 per cent is not acceptable and we have to fix it. It has to come to 75 per cent over a period of time somewhere down the line. Why did the Ministry of Revenue not go to the townships and municipalities and say: "This bill is under fire. We are in a minority parliament. It can be changed in committee." Do not look at Norm Sterling. This is not my job; it is the Ministry of Revenue's job. The shortfall of notifying the municipalities is the Ministry of Revenue's problem; it is not my problem as a member of this Legislature. I see an inequity. I see an unfairness. I am voted for and elected to fix inequities and unfairness in this province. While the distillers are not first on my priority list of attacking unfairness or inequities, in terms of jobs they represent a lot of people in this province.

11:20

I talked to Jim Pollock, who represents the township of Thurlow, which would be somewhat affected by this legislation. His response was that Corby Distilleries is having troubles like the rest of the distillers in this province. He would rather see an adjustment in the assessment than lose the jobs that are associated with that distillery. This is what some of the smaller distilleries are facing. The way this amendment is drafted, it is five per cent next year. In the most extreme case, that would not even represent one per cent on the tax base of any municipality and would represent much less than that in most other areas.

If we pass this, it does not stop the Ministry of Revenue from helping those municipalities adjust to the loss. We do not have to put in legislation such as they put in section 3 to deal with another matter. It says, "In each of the years 1987, 1988 and 1989, the Minister of Municipal Affairs may make grants." Nothing prevents the minister from making a grant in 1987, 1988 and 1989 or whatever period. He can help them adjust. There is nothing to say that.

The problem is to overcome the inertia and get this thing moving. There is an opportunity put in front of us now to do something about it. When we say five per cent for 1987, it is going from 140 per cent to 135 per cent. We are asking the municipalities to adjust to that next year. In the most extreme case, that does not mean very much to each individual taxpayer's household.

Mr. Bossy: Mr. Sterling, you are saying this would change the grant situation to the municipality so that we would indirectly subsidize the tax system to the distillery by a grant system, or do I not read this right? If the municipality is put into a larger grant system because of what may happen because of this, then government would give a larger grant to the municipality to offset and subsidize the distillery to stay in that municipality.

Mr. Sterling: It is a matter of equity. The argument is equity in what they are doing, whatever their tax base is founded on. The way the Assessment Act now deals with condominium apartments is not fair to condominium apartment owners. There is an unfairness there that should be addressed. The rest of the taxpayers have to pick up the problem, be they taxpayers in the municipal or in the provincial sense.

If there is an unfairness in legislation, it should be addressed. The financial problems should be dealt with after that. I have tried to introduce an amendment in a most gradual way that will probably, in the final analysis, be easier on the municipalities than what the Treasurer (Mr. Nixon) would give. He might be quite willing to drop it from 140 to 75 per cent over a shorter period than I have included in this piece of legislation. That is my information. Therefore, what I am doing is probably protecting both the municipal and the provincial taxpayer to a greater degree than the Treasurer will.

I say, let us get on with it, do it and get it done with. We have the information. I do not know what we need to study.

Mr. Bossy: The only thing that disturbs me is this dragging-it-out situation. If there is an inequity, what I look at more is the 140 per cent. That is wrong and should be addressed, but in a more direct way. Then the municipalities will know immediately where they stand with the impact of adjusting to that. They can immediately put something in place whereby they do not have to wrestle with this reduced assessment on which they base their

taxes. Immediately, if you are going to adjust it on a percentage basis or whatever it may be, that can flow. But if the government is then making a decision to change that, it then, on the basis of what we know today, adjusts our grant system to that municipality to offset that. This is the perception I have.

Mr. Chairman: Really, you are talking about \$165,000 in the first year, by Mr. Sterling's amendment.

Mr. Sterling: It is not a lot of money in the context of the provincial budget.

Mr. Sargent: If I had any say in the policy of the government, which I have a very small part of--

Mr. Chairman: One fiftieth.

Mr. Sargent: --as a taxpayer in Ontario, I would sure as hell object to changing a law that has been in force since 1904. It has been 140 per cent. Why change it at this time and place when people cannot find a place to live, a lot of people are out of work and cannot get jobs and the sales of every distillery are growing every year? They are not going down. Most of them are making big money. I have no sympathy at all for stock exchanges or distilleries. Even though there is an injustice, if they do not like the business, get out of the business. Some mornings when I get up I say there should be a hell of a big penalty.

Mr. Bossy: Spread that \$160,000 over all the distillers and it does not amount to much, either.

Mr. Epp: I remind members that it has been the policy of this government and of previous governments, when there are tax implications, to consult with municipalities. Municipalities have not had an opportunity to react to this proposal. I would like to give them the opportunity to be consulted by the government and let them know what is going on. There are a lot of municipalities out there that would be upset at not having been consulted. Mr. Sargent is well aware of this, since he is a former mayor of Owen Sound. Other members have been members of councils. Of course, you want to be consulted by the government when changes are made.

I ask you to bear with me and to accept the government's position that we will have a thorough study of this and come back within a year with a report and recommendations. We are in favour of the principle; there is no problem with that. It is just a matter of how it should be done.

Mr. Chairman: Any other comments? How do we proceed with this? Mr. Swart asked me not to have any votes in his absence. We need an agreement to hold this vote until he returns.

Mr. Epp: If there is some difficulty with this, maybe we can go to those sections where there is no difficulty, do those and then come back. If Mr. Swart is not here at that time, then we could recess for a few minutes. All members would like to deal with this bill this morning and have it completed if possible. Is that okay with the committee?

Mr. Chairman: Does that have unanimous consent?

Agreed to.

Mr. Chairman: Then we go to clause 4(1)(b). There is an amendment suggested by the ministry that would remove "stock" in the sixth line and "exchange, commodity exchange" in the seventh line. Is that correct?

Mr. Epp: That is correct.

Mr. Chairman: Any discussion on that point?

Mr. Guindon: I have a question on the whole section. Can the ministry or Mr. Lettner help me out? Will the credit unions be able to handle this extra burden?

11:30

Mr. Lettner: When we supplied the blue book, we put in there that not all credit unions and caisses populaires would be assessed. We have given you a directive that will go in our policy directive that you have heard about. It will also be a guideline for the assessors when they are calling around.

I would refer you to that on page 18. The criteria for the credit unions and caisses populaires we would assess for business are on the left-hand side of that page. Do you have it? Perhaps I could read them out.

We are looking at a credit union or a caisse populaire for business assessment that has a "continuous and visible occupation of business premises; media advertising to promote banklike services and membership; regular hours of business throughout the week," like a bank or trust company; "operated by full-time employees; distributes surplus of funds as dividends on accounts; has a financial capacity to advertise and grant mortgages; features a variety of account types, e.g., chequing, daily interest, etc.; offers RRSP and other investment services; promotes services to attract commercial accounts; financial services advertised in the yellow pages of telephone directory."

The one that will not be assessed for business is the one with "part-time or shared occupation of premises not owned or leased by a credit union," the one that is operated out of a church basement and operated on a part-time basis; "limited flyer or notice board promotion of membership benefits; limited hours of business; maintained by part-time employees or operated by volunteers; rebates surplus funds to lower loan interest rates and, to a lesser extent, as dividends on accounts; financial capacity limited to personal loans; limited to two or three account types," instead of the other one, with the expanded range of account types; "offers only savings and other basic services; offers no competitive advantage to commercial users, name and telephone not advertised in the yellow pages."

Therefore, not all credit unions or caisses populaires will fall within the clause. It will be similar to what we had back in 1983 before the Caisse populaire de Hearst case. The part-timers will not be assessed for business (a) because they do not have a defined area and (b) because they are a one-day-a-week operation.

Mr. Lane: I noticed that when the caisses populaires were before us, they pointed out that they were good Samaritans and tried to improve the quality of life across the province by doing various things such as providing housing for seniors and so on. They seemed to be of the feeling that this would probably prevent them from being that type of good Samaritan operation in the future. Can you expand further on that, Mr. Lettner?

Mr. Lettner: All I can say is that prior to the Caisse populaire de Hearst case, they had been operating on that same good Samaritan, charitable donation idea. Caisse populaire de Hearst did not change that, so I believe this will not affect it. I do not know whether it has expanded its services--Caisse populaire de Hearst in 1983-84--but it is still operating.

Mr. Epp: The fact that they conduct some of this charitable work does not preclude them from having to pay property tax. If you were to use that criterion, if the Toronto-Dominion Bank, for instance, gave money for charitable purposes, as it does, it would not have to pay a business tax. Therefore, that is not a criterion we could identify as one that should be used.

Having grown up in Niagara-on-the-Lake, I am familiar with the credit union in Virgil, Ontario. It is almost like a bank. It dominates the municipality. It is in Niagara-on-the-Lake now because of the regional government, but it dominates that small hamlet of 2,000 or 3,000 people as a bank.

People go in and get memberships and everything else. The credit union has fine quarters. It has its own piece of land. It has 2,000 or 3,000 square feet of space, and people do their regular banking there. That is the kind of thing we are intent on incorporating in this amendment, which would have been exempt under the Caisse populaire de Hearst court case.

Mr. Lane: I guess I will have to be satisfied with the fact that the smaller operations operating out of church basements and so forth will not be affected and live with the larger ones having to be assessed the same as the banks.

Mr. Guindon: Mr. Lettner, do you have ball-park figure of what that will bring in revenue to the municipality?

Mr. Lettner: I can give you the figure after the Caisse populaire de Hearst case. The loss across the province was \$700,000 for the ones assessed. It is not our intention to increase that considerably. There is more--

Mr. Chairman: This may be a fairly significant change for a lot of the caisses populaires and the credit unions. They related to us during their presentations here that, with the Program for Change and so forth, it may be a fair shock to the whole system. What would happen if you were to lift the credit unions and caisses populaires out of there, as you are doing with the Toronto Stock Exchange, and move them into the other category?

Mr. Lettner: It would not remain the status quo, because they were there before. They are also in direct competition with financial institutions such as Canada Permanent Trust. In our building in Oshawa we have a credit union on the first floor. You can get all the services there: mortgages, loans, cash, cheques, registered retirement savings plans, everything, but no business assessment. If you walk across the street, Canada Permanent Trust offers exactly the same services and is paying 75 per cent business tax.

Mr. Chairman: If you were somehow to recognize the community aspect of credit unions and caisses populaires--I think there is quite a community aspect to those. How big a sin would it be to put them in the 50 per cent bracket rather than the 75 per cent bracket? As I understand it, it gets around the problem you see with Hearst. As I understand it, you are not assessing them at all now.

Mr. Lettner: For business assessment.

Mr. Chairman: Why could an intermediate step not be to put them in the 50 per cent bracket--intermediate, or perhaps for ever? But why would it not be a sensible thing to recognize the community aspect of these things rather than the large banking institutions?

Mr. Lettner: I do not know whether I have an answer to that one, except that--

Mr. Chairman: Except that if you were a politician, you would probably do it.

Mr. Epp: He is not a politician.

Mr. Chairman: That is right.

Mr. Epp: I am, but I am not recommending it. What we are trying to do, as we said to open over here, is to retain the status quo with respect to the period prior to the court cases. That is why we are suggesting the amendments we are. It was the status quo, something the municipalities accepted, something the industry accepted, in large part, prior to those court cases.

Mr. Chairman: Mr. Guindon?

Mr. Guindon: That is it.

Mr. Chairman: Okay. I guess we will move on to the others. You are not magnanimous today, Mr. Epp.

There is an amendment from the ministry that subsection 7(1) of the act, as set out in section 4 of the bill, be amended by:

(a) striking out "stock exchange, commodity exchange" in the sixth and seventh lines of clause (b); and,

(b) adding to clause (f) the following subclause:

"(iv) operating a stock exchange or a commodity exchange."

11:40

As I understand it, that goes after clause 4(1)(f) on page 3 of the bill under (iii), where we would have "(iv) operating a stock exchange or a commodity exchange."

Mr. Bossy: I will move that amendment.

Mr. Chairman: No, it is fine, thanks, Mr. Bossy. I think I will refer to it when we vote on the whole section.

To proceed, there is a further amendment to section 4 of the Bill by adding thereto the following subsection:

"(2) Section 7 of the said act is amended by adding thereto the following subsection:

"(la) Notwithstanding that the activity of carrying on the business of a credit union, caisse populaire, stock exchange, commodity exchange or racetrack may not produce, or be intended to produce, a profit, every person occupying or using land for the purpose of or in connection with any of those business activities shall be assessed for a sum to be called 'business assessment' computed in the manner set out in subsection (1) in respect of that business."

The members of the committee will recall that there was a great deal of discussion on this item. I think something very similar to this was recommended to us, especially in one brief, and endorsed in several other briefs. It is my understanding the ministry has accepted that.

Mr. Lettner: Yes, we have. We are making it specific rather than what people perceived as a net to catch all businesses, whether they are operated for profit or are nonprofit. Therefore, it is specific and as businesses change, we will probably have to come back and get the legislation changed.

Mr. Chairman: To proceed with section 4 of the bill. Mr. Sterling, do we have your amendment here? There is an amendment to clause 7(la) of the act. Do you require it to be read again?

Mr. Sterling: I think everybody knows what the amendment is.

Mr. Chairman: The amendment deals with the business of a distiller and sets out various rates of assessed value. Shall Mr. Sterling's amendment carry?

Mr. Swart: I guess the discussion is finished, is it?

Mr. Chairman: In fairness to you, if you have something to say, go ahead.

Mr. Swart: I raised this when the distillers were here. I feel strongly that they should be reduced to the same level as the breweries. The motion before us proposes that this be done over a five-, six- or seven-year period. Since the last meeting when we proposed this, we have had the letter from Mr. Nixon. I am concerned about the letter in this respect: It does not provide--one wants to be co-operative--any date for being dealt with, or in fact, for coming back before this with any assurance that the issue can be reconsidered by a committee.

In supporting the government on this, I would like to have a commitment that the issue will be brought back within a given period of time to be dealt with by the Legislature. If I go along with the government on this, I want to ensure it is going to be dealt with. Sometimes from lack of intent and sometimes from the pressure of other matters where there is a good intent, it never gets back to a committee or back to the Legislature.

This injustice has existed for decades. To pass up an opportunity without getting a further opportunity to deal with it in a period of time is something I cannot accept. Can the parliamentary assistant, on behalf of the minister, give some assurance as to when this will be brought back and whether it will be in a form so that changes can be made in the legislation?

Mr. Epp: There are two matters. One is that I know you have had another important commitment and we dealt with this earlier. At that time, I

gave a commitment on behalf of the ministry that we will bring it back, we hope in an accepted form, within a year's time and we hope a lot earlier. That is the maximum time we need to deal with this.

Second, as a former municipal politician, you are well aware of the consultative process that needs to be followed. We have not had the opportunity to consult about this amendment before us today. We would like to consult with the various municipalities that are going to be affected so that they have some say about what will be done and also to look at the grant structure in regard to that. On behalf of the ministry, I give you the commitment we will do it within a year and that the municipalities and the industry will be consulted, as I know you would want them to be.

Mr. Swart: Will you also give the commitment that it will be brought back in a form where action can be taken by the Legislature? It is one thing to refer an issue to a committee to report, but we have to have legislation.

Mr. Epp: I am in favour of the principle of reducing this. The ministry has no difficulty with it whatsoever. What I am saying is that we would like an opportunity to consult the municipalities.

Mr. Swart: I want to be clear on this. Do I understand you to say this matter will be brought back, initiated by the Treasurer (Mr. Nixon), within a year and will be brought before a committee or the Legislature in a form such that action can be taken?

Mr. Epp: I can give you that commitment.

Mr. Swart: You give that commitment.

Mr. Epp: If I get fired tomorrow from my position, then--

Mr. Sterling: Let me clarify what you are saying to us. Are you saying you are going to have a bill in front of a committee within a year, that your intention is to reduce it to 75 per cent and you will have legislation that will effect that change?

Mr. Epp: I said I will give the commitment, on behalf of the ministry, that after consulting with the municipalities and the industry, we will bring back a proposal to reduce the amount of business assessment on these various industries. I did not specify an amount. I do not see any difficulty with the 75 per cent, but I cannot, on behalf of the Treasurer, give that specific amount. I see no difficulty with it but I cannot specify that.

Mr. Swart: However, it will be in a form that can be dealt with and amendments made.

Mr. Epp: Certainly. I am not trying to play games here or anything; I am merely trying not to go beyond what I think is my mandate as a parliamentary assistant.

Mr. Swart: I am not trying to play games either. I am supportive of Mr. Sterling's amendment. On the other hand, if consultation with the municipalities can be addressed--I will not admit you have not had the opportunity; I will admit the consultation has not taken place--I am prepared

to give that extra measure of consultation, but I have to make sure we will have it back here so that we can deal with it.

Mr. Epp: I accept that, Mr. Swart.

11:50

Mr. Chairman: Those in favour of Mr. Sterling's motion, please indicate. Four. Those opposed? Four.

I will have to break the tie and I will go with Mr. Epp on this one, the reason being--maybe you cannot give a reason, but I am going to do it anyway. I think Mr. Sterling has introduced an abundantly fair motion. Its weakness is that there is no opportunity for us to assure the municipalities there will be no loss of revenue or that there will be a phasing-in for them. Had Mr. Sterling been able to incorporate that into his motion, it would have been 100 per cent. Therefore, the amendment does not carry.

Motion negatived.

Mr. Sterling: I could move another amendment. Is that what you want me to do, Mr. Chairman?

Mr. Chairman: That is a possibility. I was looking at it and it might have been worked into section 3. However, it is lost.

Mr. Bossy moves that subsection 7(1) of the act, as set out in section 4 of the bill, be amended by:

(a) striking out "stock exchange, commodity exchange" in the sixth and seventh lines of clause (b); and

(b) adding to clause (f) the following subclause:

"(iv) operating a stock exchange or commodity exchange.

Motion agreed to.

Mr. Chairman: Mr. Epp moves that section 7 of the said act be amended by adding thereto the following subsection:

"(1a) Notwithstanding that the activity of carrying on the business of a credit union, caisse populaire, stock exchange, commodity exchange or racetrack may not produce, or be intended to produce, a profit, every person occupying or using land for the purpose of or in connection with any of those business activities shall be assessed for a sum to be called 'business assessment' computed in the manner set out in subsection (1) in respect of that business."

Motion agreed to.

Section 4, as amended, agreed to.

On section 5:

Mr. Sterling: I would like to ask the ministry officials the purpose of this section. Other sections of the Assessment Act deal with the same

matter. I understand the existing sections talk about reassessment. What is the differentiation between a general reassessment and a reassessment?

Mr. Lettner: We are talking of a general reassessment that is probably under section 63 or section 70.

Mr. Sterling: What does this clause do?

Mr. Lettner: It allows us to assess pipelines and set the rates at the same basic year that we are setting for the rest of the municipality.

Mr. Sterling: What does it do that the other section did not allow you to do?

Mr. Lettner: Pipelines are in a separate section of the act and are frozen. The rates are in the act. We have to set the rates by regulation every time and unfreeze that one section of the act to allow us to do pipelines. This provision will allow the minister to make regulations with regard to pipelines at the same year. At the present time, all section 63s are using a base year of 1984 market value. It will allow us to set the rates, 1984 for pipelines, make the regulations and reassess them at the same time under the same regulation.

Mr. Sterling: This matter has been raised with me by the Ontario Petroleum Association.

Mr. Lettner: We have discussed it with the Ontario Petroleum Association and it is in general agreement that we should assess without setting a separate regulation.

Under subsection 24(17), the rates are tied every third year. All we are saying is that if we reassess in the second year, we should bring the pipelines up to the same value as the rest.

Mr. Chairman: In clause 24(17)(b) at the bottom of the page, there seem to be some words that I am not sure need to be there. What would happen if you left out "designate the second and subsequent pipelines; and"? I cannot see why that is in there.

Mr. Lettner: From memory--I have not done pipelines for a while--we assess the first pipeline at the full rate; we assess the second pipeline at considerably less. You have to put in "the second and subsequent pipelines" and prescribe the percentage of rates to be applied to them because they use the same right of way. The agreement we have had with the pipeline companies for years is that the first pipeline is at the full rate. I would be lying if I tried to tell you what the percentage was for the second pipeline, but let us say it is 50 per cent for the second and subsequent pipelines in that right of way. That is why that is in there.

Mr. Sargent: Fifty per cent of what?

Mr. Lettner: Fifty per cent of the full rate. The first pipeline that goes down the right of way is at 100 per cent. The second pipeline and subsequent pipelines that go down--

Mr. Sargent: A hundred per cent of what?

Mr. Lettner: Of the value; of the cost of the pipeline.

Mr. Sargent: Who sets the cost?

Mr. Lettner: The costs are set by the Ministry of Revenue in consultation with the pipeline companies after reviewing what it cost them to put down the pipelines. They supply us with their costs of going through all municipalities, let us say in 1984. We review those costs for two-inch, half-inch or six-inch pipe and we arrive at a value per foot for pipeline in the ground: the cost to excavate, the cost to wrap, the cost to put the pipe in the ground. The pipeline companies--Consumers' Gas, Union Gas and the others--will give us their invoices and we arrive at a realistic cost to put pipelines in the ground.

Mr. Sargent: Does the size of the pipe mean anything?

Mr. Lettner: Yes, it does. We have a different rate for half-inch than we do for one-inch pipe, for two-inch pipe, for three-inch pipe and up. The sizes and the costs are given to us by looking at the contracts they paid going through normal conditions: not for putting the pipeline in the city of Sudbury, where they have to blast rock, but for putting the pipeline, let us say, in Owen Sound, where there is pretty good sandy soil.

We have never had any problems with the pipeline companies or with regard to the rates, but it is through consultation with them because they are the ones who have all the rates.

Mr. Sargent: Is that a potential source of revenue for a municipality, more than--

Mr. Lettner: It is a source of revenue now for municipalities.

Mr. Sargent: More?

Mr. Lettner: No, not more, but it should be reassessed at the same level of value as everything else in the municipality when we do a reassessment.

Mr. Henderson: The chairman's question caught my interest because I am always intrigued by the idea of reducing verbiage. The words "designate the second and subsequent pipelines" might refer to the fact that there is going to have to be a process of deciding which is the first, which is the second, which is the third and so on. Given that there might be more than one there, they are both going to want to claim not to have been the first if the rates are less. Is that right, or could those words be removed? If you read it without those words, it seems to flow pretty well.

Mr. Lettner: Our practice has been that the smaller pipeline is always the second.

Mr. Henderson: In that case, those words could be deleted.

Ms. Patterson: The practice has been that where there were two pipelines of the same size on the same right of way, the second one was given the benefit of the reduced rate. Where there were two pipelines of different sizes on the same right of way, the smaller pipeline--that is, the one that would produce the lower impact--was the one that received the benefit of the lower rate. There is a regulation that provides for this in municipalities that have had an equalization assessment based on section 63, which already has this wording and for which regulations have been provided.

12:00

The problem with this particular section relates to areas that have been proclaimed, under section 70, at full market value. They do not have an analogous provision or analogous regulations. They are tied into a triennial review, which may not match up with the general equalization of assessments within that area at all. Therefore, it is a matter of the language also being the language that is used in the regulations made under the section 63 municipalities, and it is a fairly complex thing to decide which one derives the benefit of the reduction.

Mr. Swart: In addition, perhaps we might clarify it. I know that if you left open which was the second pipeline, there always could be a tremendous dispute, especially if the same company did not own the two pipelines. This gives the minister the power to designate which is the second, so that it removes an area of dispute.

Mr. Sargent: Pardon this question: How would you get Bell telephone? How do you whack those guys?

Mr. Lettner: To start with, Mr. Sargent, we do not whack them. We work on a percentage of their gross receipts in a municipality. They supply us with their gross receipts--

Interjection.

Mr. Lettner: No, it is not on lines and poles; it is on the gross receipts of the telephone company.

Mr. Swart: You were a mayor for many years. You should know that.

Mr. Sargent: I did not know that. Thank you.

Mr. Chairman: You do not buy that. Tell me, then, why "as so prescribed" is in there. You are prescribing it and then you say, "as so prescribed."

Mr. Lettner: Under the Assessment Act at the present time, again under clause 24(16)(b), it is the same wording. It says, "where two or more pipelines occupy the same right of way, designate the second and subsequent pipelines and prescribe the percentage of the rates as so prescribed at which the second and subsequent pipelines are assessable and taxable."

It gives the minister the right, under regulation, to designate what the second pipeline is and to prescribe the rates.

Mr. Chairman: "As so prescribed," though, is what I--you describe it "as so prescribed."

Mr. Lettner: It says "as so prescribed" in the regulations. Is that right, Mr. Fader?

Mr. Fader: There are two prescriptions, if we can use that expression. One is where the minister prescribes the rates to be applied for the taxation of a pipeline. For the second and subsequent pipelines, if I apprehend it correctly, he prescribes a percentage of the first rate that he prescribed, which applies to those subsequent ones. Thus, you need the two "prescribeds."

Mr. Chairman: I am sure Mr. Sterling agrees with all of you.

Mr. Sterling: I do.

Mr. Sargent: Where is Bell Canada? Is Bell in here?

Mr. Chairman: No.

Mr. Lettner: Bell Canada is in the Assessment Act.

Section 5 agreed to.

Sections 6 and 7 agreed to.

Title agreed to.

Bill, as amended, ordered to be reported.

Mr. Chairman: Shall we go to lunch?

Mr. Sterling: With regard to my private member's bill, which is still in front of this committee, will there be an opportunity to do the clause-by-clause on that next week?

Mr. Chairman: Mr. Sterling is raising the question of his Bill 71. He has been wanting us to consider it clause by clause. It is the nonsmoking bill--or it involves smoking, at least. As far as I am concerned, I would be quite happy to consider that bill next week. We have to get the permission of the House to do so, because we were at the estimates of the Ministry of Industry, Trade and Technology and then we stopped to consider this bill. What is the feeling of the committee?

Mr. Sterling: It is important to get it back into the House, especially since yesterday there was a private bill from the city of Toronto dealing with smoking in the work place, and my bill deals with the same matter. Both of them should be back in the same forum so that the House can make a decision.

I understand that some of the government members expressed some opposition yesterday to the bill from Toronto in the standing committee on regulations and private bills on the basis that there was an overall bill doing the province-wide thing.

Mr. Swart: I am just thinking of the procedure we go through on this. I believe it has to be designated by the House leader and authorization has to be given to deal with it. I am supportive of the request, and if it were in order, I would be pleased to move that we ask the House leaders to authorize this committee to deal next with Mr. Sterling's bill.

Mr. Chairman: All in favour of that?

Agreed to.

The committee adjourned at 12:06 p.m.

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STANDING COMMITTEE ON GENERAL GOVERNMENT

NON-SMOKERS' PROTECTION ACT

THURSDAY, DECEMBER 18, 1986

Morning Sitting



STANDING COMMITTEE ON GENERAL GOVERNMENT

CHAIRMAN: McCague, G. R. (Dufferin-Simcoe PC)
Fontaine, R., (Cochrane North L)
Grier, R. A. (Lakeshore NDP)
Guindon, L. B. (Cornwall PC)
Henderson, D. J. (Humber L)
Lane, J. G. (Algoma-Manitoulin PC)
McKessock, R. (Grey L)
Pollock, J. (Hastings-Peterborough PC)
Sargent, E. C. (Grey-Bruce L)
Sterling, N. W. (Carleton-Grenville PC)
Swart, M. L. (Welland-Thorold NDP)

Substitution:

McGuigan, J. F. (Kent-Elgin L) for Mr. Fontaine

Clerk: Deller, D.

Staff:

Baldwin, E., Legislative Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday, December 18, 1986

The committee met at 10:13 p.m. in room 228.

NON-SMOKERS' PROTECTION ACT
(continued)

Resuming consideration of Bill 71, An Act to protect the Public Health and Comfort and the Environment by Prohibiting and Controlling Smoking in Public Places

Mr. Chairman: We have a quorum and we will commence consideration of Bill 71, An Act to protect the Public Health and Comfort and the Environment by Prohibiting and Controlling Smoking in Public Places. This is Mr. Sterling's private member's bill. You will recall that we had extensive hearings on this bill earlier in the year. As a result of those hearings, Mr. Sterling has submitted a new bill that reflects a considerable number of amendments that are clearly marked for our assistance.

There are two ways we can proceed with this. We can use the bill as introduced by Mr. Sterling on December 5, 1985, or we can agree to use the new bill and consider each amendment as we proceed. I rather feel that we should deal with the bill as it was introduced in the House and amend it, or consider the amendments that Mr. Sterling has put forward, because it was the old bill that was out for public consumption. We have every right, if we wish, to amend it, but if we do not proceed in this fashion we are actually considering a new bill. I do not know how we will operate it but if we use this one and say we will delete certain things if we do not agree with them, that gets sort of messy.

Mr. Swart: I agree with you, although it would facilitate things if we could use the new bill. The bill referred to us by the House, by the government, is the bill that was introduced in the Legislature. I am not sure how we can deal with a new bill procedurally without moving an amendment to each section as tabled in the Legislature. I am open to any explanation, but unless there is one, I do not believe we can do anything other than this.

Mr. Sterling: I believe that is the normal procedure. The new form of the bill, if you want to put it as such, is really my dream of where the bill will end up after the committee deals with it. As I understand it, the same procedure has been utilized by ministries in other circumstances where there are substantial amendments to an original piece of legislation. It is really done as a reference point for the committee more than anything. I am quite satisfied to work with Bill 71 as originally introduced on December 5, 1985, and in January received second reading in the Legislature.

I suggest for the members' own purposes in dealing with the clause-by-clause that they keep a copy of both bills in front of them so they can compare them as we go through the various amendments that will be proposed during these hearings. That is fine with me, Mr. Chairman. I agree with you.

Mr. Chairman: Is it agreed?

Agreed to.

Mr. Chairman: As I understood the previous bill that we considered, the explanatory notes were changed by legal counsel to reflect what was in the bill. Perhaps legal counsel should advise us how to proceed in this case where it is suggested that the explanatory note be changed.

Ms. Baldwin: I suggest that the committee not worry about the explanatory note. Once the committee has made its amendments, it is our duty to review the explanatory note in any event to reflect what the bill says. The normal procedure is to leave it to our office to do the explanatory note to express to the Legislature what the bill contains as amended by the committee.

Mr. Chairman: Is it agreed? I guess it is more than agreed; it is proper.

10:20

Mr. Sterling: Before we begin, perhaps I can make a few general comments. I will not take up much of the committee's time. After the committee's hearings in September, I received a letter from the federal Minister of National Health and Welfare supporting this bill. I filed it with the clerk this morning. He wrote to me offering his personal support for this private member's bill. I think it is important for the members to know that. He points out in that letter, which you will be getting a copy of shortly, that more than 30,000 Canadians die prematurely from illnesses caused by smoke.

I was interested yesterday, and I have clipped out for the members of the committee from the three daily Toronto newspapers, the concern of the United States Surgeon General, Everett Koop, about secondhand smoking. That is there for your information.

The amendments to the bill that I will be proposing today basically deal with the submissions we heard early in September. There are also some housekeeping amendments associated with the wording that were suggested by legal counsel to make the bill more easily read in the final analysis and also to meet some of the objections that were brought forward by some of the submitters.

The principal amendments that we will be putting forward deal primarily with the designation of an enforcement agency, which you will recall was of concern to a number of groups. Who is going to be responsible for enforcing this piece of legislation? Is it going to be the municipal police, the local medical officer of health, a bylaw enforcer, the Ministry of Labour or whoever? After listening to various groups, I put in a section designating the medical officer of health as the party who should be responsible for enforcing the legislation.

The other area that is a major shift in the bill deals with smoking in the work place. It addresses specifically that work places will be covered by this legislation beginning in January 1988. It puts forward the trigger mechanisms for it to take place at any work place and we will discuss them at a later time.

It also increases the fines for people who contravene this act. For a proprietor or employee who does not comply with the act, it takes the fine from \$100 to a maximum of \$5,000. For a smoker, if one were ever charged, the maximum would be \$100. When I originally set the fines, I was thinking more of

someone contravening the law in terms of a person smoking in a nonsmoking area. The problem with that is that, as we are experiencing with Sunday closing laws, it might be more convenient for someone to break the law than to address the legislation. That is why the fine was increased.

With those introductory remarks, perhaps we can proceed.

On section 1:

Mr. Chairman: Mr. Lane moves that clause (a) in the definition of "enclosed public place" in section 1 of the bill be amended by inserting after "customers" in the seventh line "patients."

Mr. McGuigan: What about "clients"? Would that not take care of people in a doctor's office?

Mr. Sterling: I think the intent was that the original legislation tried to deal with hospitals, with our health care institutions separately and apart from the normal public place. It was thought that to clarify the legislation--you will see from other amendments that are proposed later that other than the patient's room and special places where there are absolute guarantees that there is no smoking, there are other public places such as waiting rooms, halls, etc. that would fall under the same control as a public place. To clarify this definition, it was thought patients should be included.

Mr. McGuigan: It is really meant to take in hospitals.

Mr. Sterling: Yes.

Mr. Swart: The word "patients" is generally applicable to health facilities and I think clarifies it to have that word.

Motion agreed to.

Mr. Chairman: Are there any further amendments to section 1?

Mr. Lane: I would like to ask a question about clause 1(b) before I propose an amendment. I note that it defines medical treatment or care, and it includes hospitals, nursing homes and medical clinics.

Mr. Chairman: Where are you?

Mr. Lane: It is the second paragraph of clause 1(b). I am wondering whether Mr. Sterling can tell us why homes for the aged or other such institutions are not included.

Mr. Sterling: I think clauses (a) and (b) refer to the definition of "enclosed public place." The amendment you are referring to for clause 1(b) comes before the definition of "health care facility." Perhaps we can deal with clause 1(b) first and then I will try to answer your question.

Mr. Lane: Thank you.

Mr. Chairman: Are there any further amendments?

Mr. Pollock: Would a bus be a chartered bus too?

Mr. Sterling: Yes.

Mr. Pollock: It would be--

Mr. Chairman: What do mean by a chartered bus? Just a minute now. Can we please proceed in an orderly manner. We have passed clause 1(a). Are there any amendments to clause 1(b)?

Mr. Lane moves that clause (b) in the definition of "enclosed public place" in section 1 of the bill be struck out and the following substituted therefor:

"(b) a bus or other vehicle that is used to provide transportation to the general public for a fee during the time that it is so used."

Mr. Sterling: This was suggested by legislative counsel as a better definition than the one in the original bill. It would more clearly identify that "bus" was included as a common carrier.

Mr. McGuigan: Would this include the cabin of a truck? You might have two drivers in a truck and one smokes and one does not.

Interjection.

Motion agreed to.

Mr. Chairman: Are there any questions on "health care facility"? Does that definition remain the same?

Mr. Swart: Perhaps I have not looked at it thoroughly enough to ask this question, but I notice that on page 2 there are references to "health facility." I presume you mean a health care facility. If it is one and the same, that definition should be corrected. For instance, I am looking at the original bill to the one that we are dealing with. It says:

"No person shall smoke a cigarette, cigar, pipe or other lighted smoking equipment in the following areas of a health facility." There is no definition of a health facility. There is a definition of a health care facility. They should read exactly the same. When we come to those sections, I will move the amendments that need to be moved to change those references to health care facilities. Perhaps you already have that in your amendment.

10:30

Ms. Baldwin: Mr. Chairman, perhaps I can speak to that. I think you will find Mr. Sterling's amendments will deal with that, but in any event, with the committee's concurrence, as we go through the bill, if it happens that all of us miss an instance where the words "health facility" appear, with your permission, editorially I will make sure that reads "health care facility."

Mr. Swart: I have not read through all the amendments yet.

Mr. Chairman: Are there any further questions on health care facility definition? "Prescribed" means by regulations under the act, and I presume there are no problems there.

Are there any amendments to the section "smoking includes"?

Mr. Lane: I have an amendment.

Mr. Chairman: Mr. Lanes moves that definition of "smoking" in section 1 of the bill be amended by adding at the end, "and 'smoke' has a corresponding meaning."

Mr. Sterling: This amendment was suggested by legal counsel in order to ease the burden of having to repeat--if you do not include this kind of amendment, each time you say "No person shall smoke," for instance, in subsection 2(1) of the bill, you have to go through the same definition over and over again, and in section 5 of the bill you deal with the same definition once again.

By putting this amendment in, you include all of those things so that a person is smoking when he is lighting a cigarette, cigar, pipe or any other lighted smoking equipment, but also when you are referring to smoke. When you say "smoke" in the bill, you are not referring to chimney smoke or any other kind of smoke; you are referring to smoke that is caused by these instruments. That is the purpose of that amendment, just to make it easier in reading the bill later.

Mr. Chairman: Is there any discussion?

Mr. McGuigan: I have a question, Mr. Chairman. What about materials other than tobacco? Are they covered by this?

Mr. Sterling: We had not anticipated a problem with other substances being smoked. The objective of the bill is to address the problem of secondhand smoke from tobacco and not from some other substance as such.

Ms. Baldwin: Maybe I can add a word on that. From a strictly interpretive point of view, looking at the definition of "smoking," it does not refer to tobacco, so I suppose if one were smoking a cigarette with a substance other than tobacco in it, it would apply to that substance as well.

Mr. McGuigan: What made me think of it is that some people are smoking cloves apparently. This is a bad material, worse than tobacco.

Mr. Sterling: This relates to the toxic effects of secondhand smoke from tobacco, but as Ms. Baldwin puts it, the bill would cover some of those instances anyway.

Mr. Chairman: Is there any further discussion on that amendment?

Motion agreed to.

Mr. Lane: I have an amendment to clause 1(a)(1)--

Mr. Chairman: Just a moment, please. Was it mentioned in the amendment that a smoking area means an area in which smoking is permitted? That does not seem to be dealt with in the new printed bill. Is it to remain part of the bill or not?

Mr. Sterling: There should be an amendment striking that particular

definition out as it is not necessary. It was felt by legislative counsel that it was redundant.

Mr. Chairman: Then at the end of section 1 as introduced, it has been suggested that "a smoking area means an area in which smoking is permitted" is a statement in the bill which is not necessary. Is that agreed?

Mr. Swart: Obviously, that raises a question. I have not had a chance to look over all the amendments. Is it dealt with elsewhere in the bill so that it is clearly defined what a smoking area means?

Mr. Sterling: Legislative counsel suggested this amendment. Would you like to comment on that?

Ms. Baldwin: It occurred to me there is an even simpler way. The words "smoking area" do not need to be defined in the bill as redone. The committee could choose to simply vote against that particular definition.

Mr. Sterling: Mr. Swart is asking whether it is in another part of the bill. I do not think it is in another part of the bill. Is it simply a matter that "smoking" is well defined and "area" is self explanatory? Is that the reason?

Ms. Baldwin: What has happened is that since the bill has been redrafted we have not referred to a smoking area. In subsection 2(1) of the bill as redrafted we refer to an area where smoking is permitted. That definition should be struck out.

Mr. Chairman: Mr. Lane moved that the definition of "smoking area" in section 1 of the bill be struck out.

Motion agreed to.

Section 1, as amended, agreed to.

Mr. Chairman: Mr. Lane moves that the bill be amended by adding thereto the following section:

"la(1) In this section, 'medical officer of health' means a medical officer of health as defined in the Health Protection and Promotion Act, 1983.

"(2) A medical officer of health for an area or a person performing the duties of a medical officer of health for an area is responsible for the enforcement of this act in that area and for the purpose has the powers of a medical officer of health under part V of the Health Protection and Promotion Act, 1983."

Mr. Sterling has already explained the rationale for subsection 1. Is there any discussion on subsection 2?

Mr. Swart: I have no disagreement with this. With in-depth consideration, this is the best way of doing it. On the structure of subsection 2, I have a question. It is not usual in definitions that you state who enforces the act. I presume that even though it is defined that he could enforce the act, it is an unusual structure. Normally you say who the medical officer of health is, the definition of a medical officer of health, and then you have a separate clause that says it is the duty is of the medical officer

of health to enforce the provisions of this act. I just throw that out. I do not have any disagreement at all with the principle of it.

10:40

Mr. Sterling: The problem here is that when you are dealing with restricting smoking, particularly in the work place, you have a health care issue and a labour issue. You have to deal with having someone the person knows to go to in order to resolve the problem. One of the problems pointed out to us by various people who came forward in September is that if you do not specify in the act that somebody is responsible, everybody seems to shove it on to somebody else.

Mr. Swart: I did not make myself clear. That was not my point. My point is that under the definition section of the act we use the authority to make the medical officer of health responsible. It seems to me that it would be more desirable to have that as a separate section and leave the definitions in the definition section.

Ms. Baldwin: Mr. Swart, we called this section 1(a). It in fact is a separate section. The first subsection of it has a definition of "medical officer of health" just for the purpose of this section because subsequently, when the bill is reprinted, it will be called section 2.

Mr. Swart: It will be called section 2?

Ms. Baldwin: That is right. It is not in the definition section.

Mr. Swart: Okay.

Mr. Chairman: Are there any further questions on that section?

I just raise the point that, obviously, this has a fair price tag on it. Are we allowed to do that?

Ms. Baldwin: Are you asking whether that is a money bill provision?

Mr. Chairman: Yes.

Ms. Baldwin: In my opinion that it is not a money bill provision. A money bill provision is one that by its very nature confers a benefit on or taxes a particular group. It is quite common to have provisions that are not money bill provisions which result in increased administrative costs. I think that is the nature of this amendment.

Mr. Chairman: The medical officer of health is paid for by whom?

Mr. Swart: Generally by the region or by the municipality.

I was just going to add to that. I agree with that. In addition, certainly in the areas with which I am familiar, the medical officers of health are not direct employees of the provincial government paid by the provincial government. Rather, they are paid out of the department of health of the municipality. Most frequently now, that is the region. It can be a local municipality. Am I correct in that?

Mr. Chairman: I think you will find some urban municipalities, big

ones such Barrie--although Barrie is connected with the Simcoe county board of health or whatever it is called--administer the whole county.

Mr. Swart: Yes, they do. The region of Niagara administers it. The point I am making to justify us dealing with this is that it is not money which comes directly out of the province. By passing this, we are not causing direct expenses to the province; indirectly perhaps, because it subsidizes the boards of health. I do not think we are contravening the principle that committees have no right to change budgets or to cause direct expenditures to the provincial government.

Mr. Chairman: I am not exactly sure how the board of health is funded in the counties. I think it is 80 per cent of approved expenditures, or something like that, that a municipality gets indirectly.

Mr. Swart: Not directly.

Mr. Chairman: That is why I raised the point. Shall that section form part of the bill?

Section 1(a) agreed to.

On section 2:

Mr. Chairman: Mr. Pollock moves that subsection 2(1) of the bill be struck out and the following substituted therefor:

"2(1) Subject to the regulations, no persons shall smoke in an enclosed public place unless the person is in a specific area of that place designated under subsection 2 as an area where smoking is permitted."

Mr. Sterling: This section was changed partly because we changed the definition prior to this. We said that smoke includes all of the things such as cigarettes, cigars, pipes, and it was not necessary to repeat that. This section makes a general statement, you cannot smoke in an enclosed public place unless (1), there is an area where smoking is permitted or (2), there has been a regulation by the Lieutenant Governor in Council to allow this place not to have smoking provisions. Some people would not agree with that but, in very small country restaurants, for instance, where there may be two tables, I was trying to permit the Lieutenant Governor to deal with a particular instances where the size of a small place would be such that he could regulate out certain categories in certain circumstances. It puts the onus on the cabinet to regulate out rather than regulate in. It is really a clarification of the word and it was already in the bill.

Motion agreed to.

Mr. Chairman: Mr. Pollock moves that subsection 2(2) of the bill be amended by (a) striking out "subject to subsection 3, the person in charge of an enclosed public place may designate a specific area or areas of that place as a smoking area if" in the first, second and third lines, and inserting in lieu thereof, "the person in charge of an enclosed public place may designate a specific area of that place as an area where smoking is permitted by posting a sign in the prescribed form and manner if" and (b) by striking out "existing" in the first line of clause (b).

Mr. Sterling: Perhaps this is more easily understood if you take the draft amended bill and compare it to the existing bill. You will find from

those two drafts, the original bill and the second bill that I put together by wish and hope, that basically it does the same thing but the wording has been changed around, as suggested by legislative counsel, to make it more clearly understood. It puts into the operative section the duty to post a sign. Then it is left up to the regulations how that sign is to be constructed, how many signs are necessary and all that kind of thing, rather than leave a void there.

Motion agreed to.

10:50

Mr. Pollock moves that subsection 2(3) of the bill be amended by inserting after "bus" in the fourth line "while."

Mr. Sterling: This is a minor amendment. I thought it would be a bit ridiculous that, after a school bus driver has deposited the children at school and is driving back home or wherever he is going, if he is a smoker, there should be a limitation on his smoking during that period of time. Technically, the way it was written before, he would be breaking the law. Therefore, it was just a matter of including that word while we have a chance to amend it.

Motion agreed to.

Section 2, as amended, agreed to.

On section 3:

Mr. Chairman: Mr. Pollock moves that section 3 of the bill be struck out.

Mr. Sterling: The reason for an amendment to section 3 of the bill is to include these provisions in section 5a, which will be introduced as an amendment later, I understand, basically because at this stage of the bill we are dealing with the duties of a proprietor in a public place. Those same duties also apply to an employer in a work place, and therefore it was thought that it would be better introduced after we deal with the appropriate issue, or the restriction of smoking in the work place. It is really taking section 3 out but adding section 5a later. That is the reason for doing it at this stage.

Mr. Guindon: Why would you move them from section 3 to section 5?

Mr. Sterling: Because basically the thought was, Mr. Guindon, that the same code of conduct or the same kind of conduct would be required of a restaurant owner in dealing with public people who came into his place as would be required of an employer in dealing with his employees in his employment, so that the section is being put after dealing with what the employer has to do in dealing with his employees.

You deal with public places, as we have done in section 2. Then in section 5 we deal with what the employer is responsible to do. Then you deal with the kinds of signs that have to be posted and that kind of thing after you deal with those first two. It was a suggestion of legal counsel that it be done in that manner.

Motion agreed to.

Section 3 negatived.

On section 4:

Mr. Chairman: Mr. Pollock moves that subsections 4(1) and (2) of the bill be struck out and the following substituted therefore:

"4(1) No person shall smoke in an area of a health care facility that is not an enclosed public place if the area is,

"(a) a kitchen or a laboratory; or

"(b) a patient's room if the patient has requested that there be no smoking in his or her room.

"(2) A patient in a health care facility has the right to request that there be no smoking in his or her room and the person in charge of the health care facility shall ensure that on admission every patient is advised that if the patient so requests, smoking will be prohibited in that room."

Mr. Sterling: This amendment is basically the same wording as the existing section 4 of the bill except that it excludes clause 4(1)(c) of the original bill. It is not necessary to deal with a nonsmoking area of a waiting room, because a waiting room in a hospital would be a normal public place and would be covered by the other provisions of the bill anyway. Therefore, it was really redundant to put it in clause 4(1)(c) of the original bill.

The other parts deal with the right of a patient not only to have accommodation of nonsmoking but also to be able to instruct either employees of the hospital or anybody else coming into his or her room that he cares not to have smoke in that particular accommodation. It strengthens the right to a further degree if somebody is so thoughtless as to come in and smoke in that room.

Mr. McKessock: I notice there has been another change there where you say, "No person shall smoke in an area of a health care facility that is not an enclosed public place." That was not in the first bill. What do you mean by "that is not an enclosed public place"?

Mr. Guindon: Where are you?

Mr. McKessock: Section 4, the amendment.

Ms. Baldwin: The bill has already previously dealt with no smoking in enclosed public places. My understanding is that this is to make it clear that this is a no smoking requirement above and beyond enclosed public places.

Mr. Guindon: You mean outside?

Mr. Sterling: No. I think it means that if you have private accommodations in a hospital, that is not a public place. Therefore, even though it may be interpreted as a private place--and therefore this provision goes over and beyond what normally would be in effect concerning the kitchen, for instance; or the laboratory may not be a public place, because you and I do not have the right to go into those places--this was to ensure that in those areas, notwithstanding that they may not meet the definition of a public place, smoking is controlled.

Mr. Swart: The problem may be, though, that you feel that public places are being excluded, but they are already covered elsewhere in this

bill. You cannot smoke in a public place except in a smoking area. Thus, the waiting rooms and the corridors--I presume that is why you took out corridors--are already covered under the act. What we are trying to get in this section, as I see it, are those other areas of a hospital or a health facility that are not public areas. They are either the patient's own private area or the kitchen or other areas, which are not public areas.

Mr. McKessock: There will be no smoking in the kitchen. We should have probably added the kitchen on public transportation, too. I recall sitting in a nonsmoking area in an airplane, right alongside the kitchen, or what you might call the kitchen in an airplane. There are just swinging doors, and the attendants were smoking in there, so it readily came out over the doors even in the nonsmoking area.

Mr. Sterling: I guess planes are a bad example because they are basically covered by a federal regulation. I think air is termed interprovincial transportation. I think the other provisions of the bill would cover off that particular problem.

Mr. McKessock: But you are covering planes in this bill, too, are you not? Public transportation?

Mr. Sterling: I will ask legal counsel to clarify whether jurisdiction extends to--

Mr. McGuigan: Public transportation where it is governed by Ontario rule.

Mr. Sterling: Yes.

Mr. McKessock: So you are saying that Air Canada or other aircraft are not covered by this bill.

Mr. Sterling: That is right.

Mr. McGuigan: Trains are not, either.

11:00

Mr. Guindon: To Mr. Sterling or legal counsel, I understand this section as saying that if the patient is in the hospital and if he prefers a nonsmoking room but is in the smoking ward, he can ask the head nurse to make all the others stop smoking if they are in a smoking ward or if it is a semi-private room or something.

Mr. Sterling: What would happen is that if he were in a semi-private room, for instance--

Mr. Guindon: He is not there yet, but there is a semi-private room and there is already a patient there who is a smoker. He is in a smoking room and there is no other place in the hospital. What are you going to do with a guy who does not want a smoking room?

Mr. Sterling: First of all, you would be covered. He has to be advised that he has the right to a nonsmoking accommodation.

Mr. Guindon: Which they cannot offer.

Mr. Sterling: He has that right.

Mr. Guindon: You cannot give him that right if the hospital is full and there is no more room.

Ms. Baldwin: As the bill is drafted now, what you are saying is correct. If it came to the point where the hospital had designated these rooms as nonsmoking rooms and those rooms as smoking rooms and if all the nonsmoking rooms were filled, as happens in airplanes sometimes, they would indeed be required to make one of those smoking rooms a nonsmoking room to accommodate the patient.

Mr. Guindon: I cannot support that.

Ms. Baldwin: As it is drafted.

Mr. McKessock: Mr. Guindon's concern is that he is the guy in the smoking room and there is only one bed left--in his room.

Mr. Guindon: You have a right to die. Somebody has a right to die.

Mr. McGuigan: You have covered my point. Just a part of that point, though, is that if you are a smoker and you wanted to continue smoking in the hospital, then you are sure only if you take out a private room. Right?

Mr. Sterling: If you were a smoker?

Mr. McGuigan: Yes.

Mr. Sterling: Yes, you are absolutely sure. Presumably, the hospital can administratively take care of the problem in most instances.

Mr. Swart: The member for Cornwall (Mr. Guindon), of course, has a point, but I guess that brings us right to the very guts and base of this bill. It is that if you have two people, one a smoker and the other a nonsmoker, and they have to be in the same room because there is no accommodation elsewhere, the nonsmoker is going to get priority. It is the very basis of the bill and it is one to which I subscribe.

Mr. Henderson: I do not know that I am going to be very helpful, but I really do see this as a serious problem. First, the whole business of finding beds in hospitals is already very difficult. Hospital admission departments are extraordinarily complex, difficult and stressful places, and if you started trying to set aside certain beds as nonsmoking and certain as smoking and deciding how you were going to deal with a four-bedroom suite and so on, I think, frankly, it would be unworkable. It just could not succeed, because of the already horrendous number of variables that hospital admission departments have to struggle with in trying to decide who goes to which bed. It would be very counterproductive.

The other thing which has to be kept in mind is that, although I agree that where the rights of the smoker and the nonsmoker conflict, the rights of the nonsmoker ought to be encouraged--ought to take priority, really--you occasionally find yourself in a health facility where being able to smoke is a matter of health to somebody.

Mr. McKessock: --psychological.

Mr. Henderson: I suppose, but not just that. If a patient has a complex condition that rests on a number of different factors--for example, congestive heart failure, a bit of diabetes or a recent coronary; I can think of a number of examples--where you just manage to tip the balance into health and stability from decompensation, not letting him have a cigarette if he is a habitual smoker could be the thing that tips the balance back the other way. It really is very complicated, I think. I will not get into the whole question of the psychological importance; I am not even touching that because it defies anybody to understand it.

I began by saying I did not know how constructive I was going to be, and I think that is so. I am pointing out a complexity, and I really do not know how it can be dealt with in the matter of designating beds as smoking or nonsmoking. I hope one would encourage hospitals to make all beds nonsmoking, but in a way that allows for particular circumstances and considerations to be taken into account. That is important.

Mr. Sterling: May I ask a question, Dr. Henderson, in response because of your special expertise? In how many instances would this necessity to smoke be a health consideration? Is it one per cent? Is it 10 per cent?

Mr. Henderson: I would not want to put a percentage on it. I think it would be infrequent.

Mr. Sterling: Infrequent.

Mr. Henderson: Yes, but it could be awfully important.

Mr. Sterling: Do you think this would administratively difficult to handle?

Mr. Henderson: Yes, I do. Although theoretically you can say, "Give that person a single room," what happens is that you have ward with so many single rooms, and the single rooms go to the people who are critically ill. Then you have a number of other people who would like a single room, but there are not any available. Then you have another whole group of people who are seriously ill but not quite critically enough that it becomes life and death. Whom do you displace, if you displace anybody, to give that person a single room? Then to throw in the consideration of smoking, I think, is adding an ill-advised complication to it.

Mr. Swart: Dr. Henderson raises a legitimate problem. I am still not at all of the opinion that, if it comes to a conflict between the two, the smoker should win out. However, as you have stated, there may be a medical consideration. I am not sure how one would put an amendment, but it perhaps could be subject to the unanimous opinion of the doctors for the patient within the room, or it could even be left up to the administrator, who would get advice from the doctor. I can understand that for somebody who has been smoking all his life, it could have a an adverse effect on him, and I would not object to some arbitration process, if you will, using those words, on medical grounds.

Mr. Lane: I wonder whether legal counsel can help us with this. Perhaps we can add another word or two to the last amendment saying "if such facility is available" or something that would not bind any person to having to provide it if it were not there.

Mr. Sterling: I am open to rewording and putting something into the amendment, but there are two sides to this in terms of getting the facts. If you want to come down to the very, very basis, you may have two people in a room. You may have the medical situation you are talking about, in which it is important for that person to smoke. Then you may have somebody in the next bed to him to whom it is important that there not be smoking, maybe an asthmatic.

Mr. Lane: If he is on oxygen, there is no smoking in that room.

Mr. Sterling: There cannot be smoking with that. What you are talking about is an administrative problem. Ottawa General Hospital has no smoking anywhere, period. I do not know how it is dealing with the infrequent cases you are talking about. I know that at the Sunnybrook Hospital here in Toronto there is no smoking in any patient's room, period, throughout that hospital.

What I think has to be developed by the hospitals, notwithstanding that it may be difficult from time to time, is a clear recognition of the severity of the health hazard involved with smoking and its effects on nonsmokers. You get back to the priority argument, which Mr. Swart put forward.

11:10

Having said that, I am quite willing to try to get around that. I guess I am fearful if it is a preference on the part of a smoker to smoke and has nothing to do with the medical situation but it clearly affects another patient or patients in that room. I would not like that medical opinion taken lightly in terms of giving one that right.

Mr. McGuigan: You are not thinking of the medical certificates that were issued back in the prohibition days, are you?

Mr. Chairman: Mr. Lane had a question of legal counsel.

Ms. Baldwin: With regard to your question, I would be happy to draft what the committee would like to do if it wanted to make a change to this section. I am sure that whatever you want to say we can find a way to say somehow.

From what I understand of what the committee is saying now, one concern has been expressed that where it might be injurious to a patient's health not to be allowed to smoke, maybe there should be an exception. I suppose that could be stated outright or the second part of subsection 2 could be made subject to the regulations and the Lieutenant Governor in Council could be given power to set out circumstances under which it would be a little different from this.

If the committee's concern is, as I heard it expressed earlier, that in an ultimate contest between a smoker and a nonsmoker, the smoker should win, that can be done too. As soon as I understand what it is the committee would like to do or if any member would like me to prepare a motion, I would be happy to do so.

Mr. Guindon: Smokers should be allowed to live.

Mr. McKessock: Could you say that the smoker be given preference to a smoking ward? I do not whether there would be such a thing or not, but that would indicate that there would be.

I presume the smoking ward would have to have no more than two beds because if there were four or five, you would probably have one smoker and four beds empty some of the time. If there were a two-bed ward for smokers, you could say that a person be given preference for a smoking ward. If that ward were full, there would not be a place for him.

Ms. Baldwin: In the way it is drafted now, that is something we would expect to happen administratively. I could say that if the committee wanted me to do so. I am not sure as a practical matter that it would be necessary. I assume that in those hospitals where there is smoking in some rooms, the hospitals would be trying to put smokers together and nonsmokers together.

Mr. McKessock: I think what you are saying is that it is taken care of in the bill as it stands.

Ms. Baldwin: With the bill as it stands, my assumption is that a problem would arise when there is not room and there is a conflict.

Mr. Chairman: That is the point. It is up to the hospital, to which several have alluded, to decide whether there are going to be any smoking rooms. If the hospital designates a smoking room, I do not think a patient has the right to demand a bed in a smoking ward, whether it has two or more beds. He does not have the right to stop everybody else.

I think it is in the matter of designation. If the ward were empty and the hospital decided to take down the sign and make it no smoking, it can do that, but I do not think, after having told people they are in a smoking ward, that another patient has the right to come in and say, "I am going to make this a nonsmoking ward."

Mr. Henderson: Something to be considered is that the bill might simply say that patient rooms in hospitals shall be designated to be nonsmoking unless otherwise ordered by the physician and otherwise authorized by the administrator. That means the physician can decide his patient should be accepted, but if the patient happens to be in a four-bed room, the administrator still has to look into what effect it will have on the other three patients who may have different doctors. It just says that generally hospital patient rooms will be nonsmoking rooms. Maybe that is going farther than Mr. Sterling wants.

Mr. Sterling: We are not dealing with rooms here; we are dealing with patients. The bill is to protect nonsmokers from secondhand smoke, be they patients or not. That is why it is framed in the language it is in.

Mr. McGuigan: Perhaps a way out of this would be to have an amendment that would recognize those cases where an exception should be made because the patient has a medical need.

Mr. Sterling: Perhaps we could ask legal counsel, which might suggest that we stand this section down and come back to it later if legal counsel needs some time. Have you drafted anything that would be appropriate at this time?

Ms. Baldwin: My only problem in drafting it is knowing what the committee would like to have. At this point, there may be several different members who have several different solutions. If that is the case, if we stood this down, I would be happy to do a motion for each of them, and then people can discuss the various options.

Mr. Swart: I am quite clear on what I think. It is what I said before. First, I believe that the patient should have the right to want and to get a smoke-free environment. The only exception to that should be, when there is unanimous opinion among the doctors in that room, whether it is done through the administrator, that for health reasons, it is preferable to permit that person to smoke. That exception could be made, but I think there would have to be unanimous opinion among those doctors, not just the doctor of the heavy smoker but the doctors for those nonsmokers.

I know some people who are like my sister-in-law. She just got out of a Toronto hospital yesterday, and if she has been in a room where there was smoking, it would have killed her because of the condition she has; there is no question about it. There has to be that unanimous opinion among the doctors. I do not think just leaving it to a administrator to designate smoking and nonsmoking rooms is adequate.

A patient has to have the right to demand a smoke-free area unless the specific circumstance exists that it is going to harm the health of someone else not to smoke more than it harms the person who is a nonsmoker and who wants that smoke-free environment.

Mr. Henderson: May I have a supplementary to that? I think the complexity we have to remember is that the reality is that most patients in hospitals are not in single rooms. I am bringing this up against the conundrum of the whole issue of the rights of the nonsmokers and the smokers.

Do you follow what I am saying, Mr. Swart? Even if you decide that a particular patient is entitled to smoke, you have the other people in his room whose medical situation has to be evaluated too before you come to a decision about that room. The direction it is evolving is towards hospital patient rooms being nonsmoking areas except where some mechanism overrides that. I think it would be simpler to do it that way than to have it the other way around.

It would make a lot of sense to say hospital patient rooms are nonsmoking unless two things happen. A patient has to have a medical need to smoke and somebody has to evaluate the effect of that on everybody else in the room, which is going to be pretty exceptional.

Mr. McKessock: I think that is exactly what is states in clause 4(1)(b), which states that there should be no smoking in the area if the area is a patient's room if the patient has requested there be no smoking in his or her room. If the patient has requested that and we are going to give consideration to the patients who do not want smoking, then it is taken care of.

11:20

Mr. Henderson: What if the other patients in the room fall within the category that Mel speaks of, those needing to have cigarettes? Then the nonsmoker has overruled the medical need of the smoker.

Mr. McKessock: That is true.

Mr. McGuigan: For a person who needs a smoke, would this be frequently or infrequently that he would smoke? Would he need to be a chainsmoker or once an hour or something?

Mr. Sterling: The situation is this, Dr. Henderson. In the final analysis, you are caught in the conundrum of how wide do you spread the right to smoke in a health care institution. Is it a case where it is a life or death situation that the person smoke? Or is it a situation where the person is a habitual smoker but has to stop smoking while he is in there in order to accommodate the other three patients in their room? It is not a health risk to those people in a very immediate sense, but it perhaps causes nausea and discomfort for the people who are in that room. How far do you carry the whole matter?

There are a number of hospitals across this province that are now operating without having smoking in any of the patients' rooms. I have heard the problem about this infrequent number of people who have to smoke in order to maintain their medical status when they are in a critical state of health, but you have to make that decision somewhere along the line. We are going to face the same decision when we talk about smoking in the work place. It is the same kind of argument that could be put forward.

You are trying to accommodate people, but there is a problem because secondhand smoke is a health hazard to the people who are nonsmokers. You have to make that decision somewhere along the line.

I think that what would happen is if you left the section as it is you would force the administrators to deal with the problem. You may say there is an overcrowding situation and all this, but what happens is that somehow the system reacts to make it happen. That has been my experience. It may be inconvenient. It may be difficult from time to time, but somehow it does happen in the final analysis.

Mr. Henderson: Somebody very kindly brought something else to my attention that I must admit I had not thought about. That is that it may be that active hospital treatment beds should be dealt with a little differently to other health care facility beds, such as chronic care beds and nursing home beds. For example, if somebody is admitted to a chronic care facility, essentially to die of cancer of the colon or something and wants to smoke, are you going to say, "No, you cannot do that." That might be a little tough on the clinical staff to ask them to invoke something like that.

Mr. Chairman: Maybe you should put a section here that anybody at all can get into the maternity ward if they request it.

Mr. McKessock: The bill is to protect the health and comfort in the environment by prohibiting and controlling smoking in public places. That is what the bill states. We are putting emphasis on controlling smoking. We are looking at clause 4(1)(b) right now, where it says, "If the patient requests it, there will be no smoking." If you have a ward where there are two beds and the patients are both smokers, then I see no problem. They could probably smoke. I would move that we leave it the way it is. It covers both situations, but does give preference to the nonsmoker and that is what the bill is all about.

Mr. Chairman: I am a smoker and so are Luc and some others, but we want to be fair about this. The only problem is where the room has been designated a smoking room and there is an empty bed in it. Somebody comes in and says: "I want that bed. I have to have that bed, but the rest of you have to stop smoking." I think the section is all right with the exception that the person does not have the right, if the room has been designated smoking. If the hospital administration want to designate the whole hospital as

nonsmoking, so be it. That is fine and they can do that. Sure, nonsmoking is good for your health, but that is stretching it a little bit and giving the administration a real problem.

Mr. Sterling: I think they have to reject the nonsmoker if they make the decision that it is a smoking ward as such and that it has to be done that way.

Mr. Chairman: Say that again?

Mr. Sterling: You are saying that the nonsmoker is thrust into a smoking ward. What you have to do is say to the nonsmoker that bed is not available.

Mr. Henderson: You cannot do that. You cannot send somebody who is in emergency with a coronary home because the only bed available is a smoker's bed and he is a nonsmoker.

Mr. Sterling: For your argument's sake, let us say that bed was already full with another smoker. There were four smokers. What are you going to do with that coronary patient? You can go on with this argument for ever in terms of how you deal with that one situation. If you do not have the right in there, you are courting with trouble in terms of dealing with the whole thrust of the priority of whose rights are prior.

Mr. Henderson: I think we are into something that is an awful lot more complicated than we realized when we began. The more I hear the discussion the more I think we are probably not going to work it out here and give legislative counsel a clear message. I do not know how to deal with it, but I would like to come up with something that meets the principle that Norm has in mind, because I share it, and allows the intricacies to be worked out by a mechanism that will be satisfactory at the hospital level and does not impose an absurdity on the hospital. I am a little afraid that this wording might put a hospital administrator in a situation where he has to do something that by clinical criteria is patently absurd, such as sending a patient home because there is no beds for nonsmoking.

Mr. Sterling: When you are dealing with rights legislation, regardless of what you say--we have gone through it in terms of family law reform and we have done it in a number of other areas--you can point to a number of practical problems that are going to arise out of whatever you do in law. You could scuttle any piece of legislation by thinking about all these kinds of problems that may or may not exist in the final analysis. I do not agree with you, Jim, on that. The job of a legislator is to determine how important the problem is, make the decision and then let the administrator deal with some of the problems that evolve out of it. It is not all-purpose, when all the chips fall, but you have to take your stand and deal with it in some manner.

Mr. Henderson: It should be as perfect as possible. I do not disagree with the thrust of what you are saying. I just think we should get the best wording we can that meets the thrust of what you want to do and does not put the administrator in a situation that is impossible or foolish. I would not want to do that. Believe me, hospital administrators and physicians do often feel themselves put in that kind of situation by legislators.

Mr. Sterling: Hospitals have voluntarily dealt with the problem already.

Mr. Chairman: Why are you meddling with it in legislation then?

Mr. Guindon: It is the application of the whole thing that I see is going to be very hard. What you are saying is you want to take away one person's rights and give it to the other one. You cannot apply that in Cornwall because it will just get everybody upset. The hospital is trying to work its way through the situation it is now and is having a hard time.

I am sure it is like that in all the older places. When you designate a smoking area, you have 100 square feet with 15 people in it. If you think that secondhand smoke is bad, you should see those cubicles where they put the smokers. That is a health hazard by itself, just walking by the door.

I do not know how we are going to do it. I cannot agree with it. We did not even get into the nursing homes yet. We did not even discuss that, and there is another situation. There is a health care centre or whatever you call them, and that is another problem. There are people there who are over 60 years old and, because they are older people, they are heavy smokers or their smoking rate per capita is higher than that of 20-year-olds and 30-year-olds. Are you going to try to impose this on them? Is the administration going to have to work this out? They are having a hard time in some places keeping their clients happy, without the question of smoking.

11:30

Mr. Lane: The first thing we have to recognize is that if the person is ill, the most important thing is to have a bed. We certainly cannot leave a bed empty in a hospital because there happens to be smoking in that room, if somebody needs the bed. I think adding a couple of words such as "if such space is available" in that last amendment would take care of it.

Mr. Sargent: You are going to have to do a bit of stickhandling here. If the administrators of different kinds of institutions want to follow the intent of the bill, they should have the option of making adjustments. We must have faith in them following through on the intent of the bill, but I think they should have some option in difficult situations that gives them the right to conform within their boundaries.

Mr. McKessock: Maybe legal counsel should answer that question. Is that option in place now in that section of the bill?

Ms. Baldwin: For the administrator to reverse it? No.

Mr. McKessock: No, not to reverse it, but I see both options there for the smoker and the nonsmoker. It says, "if the patient has requested."

Ms. Baldwin: As the bill is structured now, if a nonsmoking patient requests a room with no smoking, the hospital has to provide it. There is no corresponding requirement that the hospital provide a smoking room for a smoker.

Mr. Sargent: The words "has to" are kind of rough. Why not say, "will try to conform"?

Mr. Chairman: The argument is simply that if a ward in the hospital is designated as a smoking area, there are four beds in the ward and a nonsmoker comes along who wants the fourth bed, the hospital has to tell the other three to stop smoking. It is the right of the patient in the fourth bed.

Mr. Sargent: That is pretty pushy.

Mr. McGuigan: In the final analysis, you have to come down and accept the position that if that fourth person is a nonsmoker, the paramount thing is for him to have a bed. It would be absolutely ridiculous if the hospital sends that person home because it does not have a designated nonsmoking bed.

Mr. Sargent: That would not happen in one case in a thousand.

Mr. McGuigan: Maybe not, but we are talking about that one thousandth case. The right of the nonsmoking patient has to prevail.

Mr. McKessock: That is what the bill is all about.

Mr. McGuigan: On both sides you have the exception of the person whose health may require that he smoke. That is a problem, is it not?

Mr. Sargent: You have come along way if you have 101 per cent. If you can get 99 per cent, why not settle for that?

Mr. Henderson: I am thinking of the question of nursing home beds. Could we consider talking about active treatment beds and having one policy for that? I favour the idea of saying that active patient beds should be designated as a nonsmoking area, unless the physician and administrator specify otherwise, and then working out a mechanism for other health care facility beds. That would allow for the situation of a 75-year-old gentleman who is admitted to a nursing home and who has smoked all his life. It is just absurd and would ruin the quality of his life to demand that he stop smoking.

Mr. Sterling: The absurd part of what you say is that you require a 75-year-old man to quit smoking. I agree with you there, but what about the 75-year-old man who has never smoked in his life?

Mr. Sargent: He should not be in hospital.

Mr. Chairman: You can come down as hard as you like on the health care side of it, but if you are reasonable, the kind of amendment I suggested is a reasonable amendment. All I am saying is that if a facility has designated a smoking room--and that sign can go up and down like a pump handle--then a patient or a nursing home resident does not have the right to come in and tell the other three people in there that they cannot smoke.

Mr. McKessock: They can flip that sign over right away if they want to.

Mr. Chairman: Sure, they can do that, but there are a lot of 75-year-olds or 95-year-olds who smoke a pipe. If you take that away from them, then get their basket ready for them in the next day or so. You cannot go the whole hog on that.

Mr. McKessock: From what Mr. Henderson said, though, active beds are different to chronic beds.

Mr. Chairman: I agree with that, but the designation of a smoking area is up to the hospital. If the hospital says there is no smoking in any of the hospital beds, that is it; but if the hospital says it has 200 rooms and there is one ward with four beds in it which is going to be a smoking room for

people such as Dr. Henderson mentions, patients whom every doctor knows have smoked for 50 years, I do not think it is fair in a 200-bed facility or even a 100-bed facility to have somebody come to the door and say: "I want in and there is a bed there. You have to give me that and you have to stop the other three people from smoking." They can move the bed out in the hall if they have to, and that goes in every hospital.

Mr. Henderson: The member for Lakeshore (Mrs. Grier) has mentioned the question of psychiatric beds, which is another volcano we have not even touched on. I would be very surprised, correct me if I am wrong, if Sunnybrook and the other facility you mentioned prohibit smoking on the psychiatric ward. That would be most unusual. I think you would get an awful lot of argument that there are so many things wrong in the wrecked lives of some psychiatric patients that the least you can do is to let them get whatever comfort and security and help they get from having a smoke.

Mr. Sterling: Would an amendment to subsection 4(2) be acceptable to the committee? It says:

"A patient in a health care facility has the right to request that there be no smoking in his or her room and the person in charge of a health care facility shall ensure that, subject to regulation by the Lieutenant Governor in Council, on admission every patient is advised that if the patient so requests, smoking will be prohibited in that room."

That would allow the Lieutenant Governor to make by regulation any exceptions necessary to accommodate what you are talking about but would maintain the integrity of the priority of the nonsmoking patient. It puts the onus on the other foot. Would that be acceptable?

Mr. Henderson: Can a regulation overturn a piece of legislation?

Mr. Sterling: If you make it subject to restriction, then it effectively can opt it out in certain circumstances, yes.

Ms. Baldwin: The way that would work, though, is that this provision would be subject to the regulations. When we got to the end of the bill which, if I was lucky, would be after lunch hour, we would then have a regulation making a provision that would spell out the circumstances under which the Lieutenant Governor in Council can do it and to what extent they can override it. Depending on how that is phrased, it could be done in such a way that the regulation is authorizing administrators, for example, to make these decisions.

11:40

Mr. Sterling: Is that acceptable to the committee?

Mr. Guindon: I have something here in regard to the whole bill. I had to step out and I missed the first section. I would like to ask legal counsel whether this bill has jurisdiction over airplanes?

Ms. Baldwin: No.

Mr. Guindon: How about trains?

Ms. Baldwin: I do not believe so.

Mr. Guindon: Then how come we regulate buses that leave Montreal and go to Toronto? They are under the regulations but you cannot do it to trains.

Ms. Baldwin: That is the nature of our federal system. The federal government regulates some things and the provincial government regulates others. Perhaps it is a policy issue of whether the provincial government chooses not to regulate something because the federal government has not done it either. It is a policy decision for you people to make as to whether you want to legislate in your area of jurisdiction, given what the federal government has done or has not done. All you are empowered to do is legislate with regard to matters over which you have power to regulate under our Constitution.

Mr. Guindon: Theoretically, we could say that when you get on the train in Montreal, once you get to the Ontario border, you cannot smoke and drink any more. That is what happens on the bus.

Mr. Sterling: That is why it has generally been the policy and the practice of governments, as they have evolved since 1867, to leave the regulation of air and train traffic to the federal government. Bus traffic tends to be more in the province rather than Canada-wide, and you can regulate that more easily than you can the other when it goes over the borders.

Mr. Guindon: It is only an observation, but it is a problem for Greyhound or Colonial to be regulated on this when the train is not. It is one more reason for somebody to take the bus or not to take the bus. I do not know what we are doing about regulating interprovincial matters, carriers, for instance.

Mr. Sterling: I suggest that is up to the federal government to tackle.

Mr. Guindon: Does this law apply in Ontario?

Mr. Sterling: Yes.

Mr. Guindon: It applies to Gray Coach, but the minute the buses cross the border one way or the other, Windsor, Cornwall and Ottawa would have a problem.

Mr. Lane: Speaking to that point, I have had reason to make a bus trip from Sudbury to Toronto twice in the last month. The sign was there and the driver very clearly said: "There is no smoking on this bus. When we stop for refreshments, have a drag or two, but there is no smoking on the bus." It is already out there.

Mr. Sterling: Yes.

Mr. Pollock: The feds have already regulated the airlines and said there is no smoking.

Mr. Sargent: They say the last six rows.

Mr. Pollock: Some have anyway.

Mr. Henderson: Mr. Chairman, what would happen if we just said that health facility beds shall be nonsmoking unless otherwise designated by the administrator in consultation with the clinical staff?

Mr. Sterling: It would take away the thrust of the bill totally. What you are doing then is leaving it up to the administrator to determine the rights of the individual as to his--

Mr. Henderson: What I had in mind was setting it up in such a way that the bed would revert to being nonsmoking unless the administrator and the clinical staff said otherwise with respect to a particular situation.

The difficulty we are all having is the policy. Most of us agree with the thrust of everything you want to do in this bill, but then we get down to individuals and for different reasons you have to make exceptions. I am suggesting setting it out in a blanket way where the policy is that health care beds will be nonsmoking, but allowing for the administrator to say to the clinical staff, "Here is a situation that has to be handled differently."

Mr. Sterling: I will tell you what happens on Air Canada planes on which I have flown 2,000 times since I was first elected in 1977. Air Canada designates a lot more smoking area than there are ever smokers on the flight. That has happened until the most recent time. That means they shove you as a nonsmoker into the smoking section.

Mr. Henderson: That could not happen under what I have just said because everything would be nonsmoking unless a particular exception was made for a particular purpose.

Mr. Sargent: They ask if you want to have nonsmoking or not. You make your choice.

Mr. Sterling: That is what the whole bill says as it is now, but it gives the nonsmoker the priority. That is all. It says you have to give him the spot. I believe it is up to the administration to provide for it. What you are doing is reversing the onus. You are saying you have to provide it for the smoker.

Mr. Henderson: I thought I was doing the opposite. I thought I was saying that the treatment beds are always nonsmoking, and the onus is on the individual to convince people that there has to be an exception. He has to convince the clinical staff and the administrator.

Mr. Lane: I understood legal counsel to say that we could deal with this in the regulations at the end of the bill. How be it we stand this section down and see at that point if the regulation is satisfactory and then we can pass section 4? We are bogged down here.

Mr. Chairman: Legal counsel needs some direction then, as she has been telling us and I am not sure she has any yet.

Mr. Pollock, did you have a question?

Mr. Pollock: No.

Mr. Lane: I understood Mr. Sterling to make a suggestion and legal counsel indicated it would take care of the situation through regulations.

Ms. Baldwin: We could then proceed to have a regulation-making authority that could take care of it. There would still be the fundamental problem for the committee. It would have to decide what it wants that authority to be.

Mr. Lane: That suggestion--

Ms. Baldwin: What is in my mind is that, given the somewhat

uncertainty in the committee, it may be that reflection over lunch would bring up a number of solutions from any one of you or a number of you.

Mr. Sterling: What direction do you need, Ms. Baldwin, in terms of the regulatory power?

Ms. Baldwin: All I need is to know what power to give to the Lieutenant Governor. Does the committee normally break at noon?

Clerk of the Committee: Yes.

Ms. Baldwin: If the committee proceeds with the other sections of the bill, perhaps I could give the committee some options after the lunch hour.

Mr. Chairman: Is that agreed?

Agreed to.

Mr. Chairman: Okay. We will stand down section 4 then for the time being. Are there any amendments to section 5?

On section 5:

Mr. Pollock: I have an amendment to section 5.

Mr. Chairman: Mr. Pollock moves that section 5 of the bill be struck out and the following therefor:

"5(1) No person shall smoke in an area of a work place that is designated by the employer as an area where smoking is prohibited.

"(2) An employer shall designate an enclosed area of a work place as an area where smoking is prohibited if at least one third of the persons working in that area request the designation or if a person working in that area whose health is adversely affected by the smoking in that area requests the designation.

"(3) Where an employer designates an enclosed area of a work place as an area where smoking is prohibited, the employer may designate a specific area of the work place as an area where smoking is permitted if the physical barriers and ventilation systems are adequate to minimize any harmful effects or discomfort the smoking may cause to the person requesting that there be no smoking.

11:50

"5a(1) The person in charge of an enclosed public place or a health care facility shall make reasonable efforts to prevent persons from smoking in areas where smoking is prohibited by or under this act, including,

"(a) posting a sign in the prescribed form and manner to notify persons that smoking is prohibited;

"(b) asking smokers to refrain from smoking if a person so requests; and

"(c) taking any other appropriate action.

"(2) An employer shall make reasonable efforts to prevent persons from

smoking in areas of a work place where smoking is prohibited under this act, including asking smokers to refrain from smoking if a person so requests and taking any other appropriate action."

Mr. Guindon: It is a long one.

Mr. Pollock: Yes.

Mr. Chairman: Are there any comments?

Mr. Guindon: Sure. I have to comment on that. There is a big difference from section 5, but I can understand that section 5 is a repeat--

Interjection.

Mr. Guindon: Yes, not because I am in complete agreement with the whole section. Subsection 5a(2) says, "An employer shall make reasonable efforts to prevent persons from smoking in areas..." Why do we always put the duty or the onus on the employer? Why can it not be the union?

Mr. Sterling: May I say that in my discussions with the very employers in dealing with this significant management problem they have, they actually asked me to put some burden upon them to basically enforce the situation, crazy as that may sound. Nobody seems to want to take the responsibility for dealing with this most significant management problem. Therefore, the employer is normally in control of the work place and he is the occupant or the proprietor of the building, or whatever you want to call it. Therefore, the burden would be put on him or management to ensure that if somebody asks that a smoker refrain, then he has to do it. I do not know how else you would deal with it.

Mr. Guindon: It is a real broad sweep, Mr. Sterling. I am just thinking out loud here. Maybe I am not be prepared, but at the moment I see a problem for employers who have fewer than 20 people or even fewer than 50 to designate nonsmoking areas, along with different jobs. I speak of the service section in a small business. Would you have a rider here that would help small business, because you are going to cost money here to an employer. If one employee demands a nonsmoking area, you could have a problem.

Mr. Sterling: If there was some proof that there was a health hazard to that one employee, then he could demand such a nonsmoking area. Under the rest of it, he would have to have some allies in his request for a nonsmoking area and having one third of the employees in any particular given area to force the situation to a decision. It does not allow one person who may have a grievance and is trying to exhibit that grievance in another form in order to be just a trouble causer to make a real disruption in the work place. It is only when a number of employees get together and say, "This problem has to be addressed and let us deal with it." That is why I put in that particular section of having one third of the employees in any one area to have to raise the issue.

Mr. Guindon: Why not be democratic and have 51 per cent?

Mr. Sterling: If the committee wants 51 per cent, that is fine by me. That is up to you. I just picked that particular number because there could be a number of employees who are more affected by smoking than--

Mr. Guindon: Maybe you have the right figures here. I am not disputing that.

Mr. Pollock: If I may ask a supplementary, you are saying that if you had two employees, the nonsmoker more or less has priority.

Mr. Sterling: Yes.

Mr. Pollock: Or if you had a whole group of employees but smoking was injurious to one person's health, then he has priority.

Mr. Sterling: By the regulations the Lieutenant Governor sets out, which I believe would be some kind of health certificate from his doctor indicating that the smoke in the work place is bothering him, then there would have to be an accommodation of that person's interests. They would have to find a spot for him to breathe clean air or they would have to clean up that particular area.

It is difficult to find a trigger mechanism to bring it in. If you look to the Metropolitan Toronto Pr25, which is back in the Legislature at this time, it just makes it mandatory that they have to come up with a policy, notwithstanding that nobody is complaining. With this bill, it has to be triggered by the employees taking some positive action.

I do not want to go into a work place where everybody is unhappy. If they can work out an informal arrangement and Joe who smokes is over in the corner and everybody else is getting along well, then fine an dandy; leave them alone. There has to be some mechanism for triggering the right of a nonsmoker to breathe clean air. This is the most reasonable way I thought it can be approached.

Mr. McGuigan: There is a practical point in the matter of causing a great deal of cost for a small operator. If there was one person whose health is really affected, probably the employer would find some other job for that person to do. That is likely what he would do. Of course, if he is a key employee who has to be in the work area, the employer would put up with the cost of doing it.

Mr. Sterling: It is a difficult problem. As you know, one of the people who was in front of this committee--a fellow who ran the lithograph business--designated his whole premises nonsmoking. He did it one day and that was it. This is not nearly as dramatic as doing that.

I suggest the cost involved with Bill Pr25 could be much more significant than the cost involved with implementing the provisions of this bill.

Mr. Pollock: Along those same lines, if the employer happens to be a smoker and sympathetic to that train of thought, he could find ways to ease that nonsmoker out the door.

Mr. Sterling: I guess you have that trouble with all employee rights kind of legislation. That problem is always there.

Mr. Pollock: It has always been like that.

Mr. Sterling: It is interesting to note with employers now that one of the things that people advise you if you are going to seek a job is never pull out a cigarette while you are there or indicate you are a smoker because your chances of getting a job are less if you are a smoker. Employers and management are avoiding future management problems by hiring nonsmokers, if it is an equal case in terms of the employee.

Mr. Lane: Mr. McGuigan has made a suggestion that will pretty well likely apply. I know of a case. My nephew works for a company in Toronto. He is allergic to smoke. His employer moved him to an office in another section of the building and he was able to continue to be employed by that company. There are other ways to work it out.

Mr. Chairman: Are there any other further questions on section 5?

12:00

Mr. Guindon: I wonder whether we should not make changes for small business; that is all. If too much cost is involved, there is going to be a problem there. If the regulations are a bit too stiff, there will be a bunch of people in the washroom not being productive.

Mr. Sterling: I guess it makes no difference whether there are 200 or two employees in terms of the ill-health effects on a particular individual. You are back to the priority question, Mr. Guindon. If you have two employees, who has priority? Does the smoker or the nonsmoker have to make an accommodation? This bill says that the smoker has to make an accommodation to the nonsmoker's wish. That is the thrust of the legislation. Basically, if it would cost too much, the employer will have to say, "I am sorry, Mr. Smoker, but you cannot smoke."

Mr. Guindon: I would like to ask legal counsel about a hypothetical situation if this bill is implemented right across Ontario and an employer does not follow it and does not provide the right ventilation, the proper smoking area. You can have a smoking area but if you are allowed to smoke out in that area, it might not stop the air from coming over here. If somebody falls sick, it could be blamed on cigarette smoking. It is usually cigarette smoke and something else such as asbestos or whatever. Does that give the patient the right to sue the employer for not providing proper ventilation for those working in those premises?

Mr. Sterling: That is the law already, Mr. Guindon. You can sue an employer now for secondhand smoke damage.

Mr. Guindon: Where do you get that?

Mr. Sterling: There was a Workers' compensation case in 1979 awarding compensation to an employee. It is an alternative to suing an employer for damage to one's health. That woman had damage as a result of the smoke in her work environment.

Mr. McGuigan: There are all sorts of lawsuits in the courts right now on this. There is one area--I do not know where it is mentioned--where one person makes a request. Should we have a safeguard that the request be anonymous? A group of people can make it hard for someone who causes trouble.

Mr. Sterling: I am with you. It is a little difficult for that person to produce what I think the Lieutenant Governor would need for the regulation. There would have to be some medical evidence that their health was being injured by secondhand smoke. It is difficult to keep that anonymous if you have to have medical information. I understand what you are saying, but if you are going to assert your right versus the other employees, I think there is a cost you have to take as an employee if you want to assert that right.

Mr. McKessock: They could also say that there was nobody, that the government just came up with it or somebody came up with it.

Ms. Baldwin: Perhaps what you want is a provision that an employer must not coerce, intimidate or threaten somebody with losing his job because he made a request for a nonsmoking area. If that is the sort of provision you are talking about, I can prepare a motion that would add another subsection saying that for you.

Interjection: It is reasonably important.

Mr. Sterling: That would be acceptable to me.

Mr. Chairman: I think the other point is that you want to be so stern in some cases and not so much in others. In section 5a, I can understand why you would have to post the place, but if there is no smoking, is it not nonsmoking? Why are you asking smokers to refrain if one person requests it? It is designated a nonsmoking area. Should clause (b) not be out of there altogether? I would argue it is misleading because you have to do a lot of reading to find out what it means.

Mr. Sterling: What you are trying to avoid is having somebody in a restaurant, for instance, say to the manager of the restaurant: "Somebody is smoking in the nonsmoking area. Will you go over and ask him to refrain from smoking?" and the manager of the restaurant says: "I am not going to tell them. You go over and tell them yourself." This puts the onus on the manager to take some positive steps to clear up the problem immediately. That is the intent of that part of the section. Do you not think that is reasonable?

Mr. Chairman: I think it goes without saying. If it is prohibited, it is prohibited. This does not seem to fit into the whole scenario. You must post it, I presume.

Mr. Sterling: Yes. There would be a regulation saying you have to post the nonsmoking area in your restaurant.

Mr. Chairman: This also says you must ask them to quit only if someone asks you to and you must take any other--

Mr. Sterling: That is right. I presume that in a good establishment, if somebody was smoking in a nonsmoking area, they would come up and say, "If you would like to smoke, we will seat you over here in a smoking area." They do that now in most cases. All this does is make it clear to the manager of the public place that he has some duty to ask people to refrain from smoking in a nonsmoking area.

Mr. Chairman: I think it weakens the section. It looks like it is the duty of the person in charge, but it is actually a sort of enforcement section. It really says to somebody if they want to be smart about it, "You can smoke in a prohibited area as long as nobody suggests you should quit."

Mr. Lane: We have a similar situation in the elevators if they want to smoke in an elevator. Often I am coming down and there is somebody smoking. I do not tell him to stop because he knows the law as well as I do. There is smoking in a nonsmoking area.

Ms. Baldwin: As Mr. Sterling mentioned when he was discussing the changes in the bill, he is proposing changes to the penalty provision so that if a smoker is found to have smoked where he or she should not have, there is a \$100 maximum fine. In the section you are talking about, a person in charge is managing a place where there is supposed to be nonsmoking. A customer has

come and said, "Will you please ask somebody not to smoke?" Under these circumstances the person in charge says, "No I will not." Then the person in charge could be liable to a maximum fine, as it is now set out in Mr. Sterling's motion, of \$5,000.

When you talk about enforcement of a provision, there are any number of gentler or more restrictive approaches that can be taken, including for example, always requiring the people in charge to police, which Mr. Sterling has not done, or not leaving it to anybody to police, in which case one does not know whether occasionally there would be a citizen's arrest of a particular smoker or whether nothing would happen.

Mr. Sterling: The idea of putting it in the bill is so that when people pick up the bill, they will know what is expected of them. They will know that they have to have the area assigned and that if somebody requests them to go and speak to another customer, it is their obligation to do it. I do not feel strongly about that. I do not think that makes or breaks the bill.

Mr. Chairman: Does it not weaken the bill? What does it mean? Does it mean that smoking is all right if nobody asks you to have them stop?

Ms. Baldwin: Absolutely not because there is still a \$100 fine against the smoker as the bill is structured now.

Mr. Chairman: Is this just polite advice so that before you fine somebody you ask them to stop?

Mr. Sterling: Most people would do that anyway. Usually the evidence has gone up in smoke by the time you call in the medical officer of health.

Mr. Chairman: I have no objection. I just think it is extraneous. I do not know why it is there.

Mr. McKessock: You are putting up a smoke-screen.

Mr. Chairman: I am not putting up a smoke-screen. I think it is a silly section personally.

Mr. McGuigan: What section are you talking about?

Mr. Chairman: Clause 5a(1)(b).

Mr. Sterling: It outlines the duties of the person who is running a public place

Mr. McGuigan: I support clause 5a(1)(b). If I go to a restaurant, implied is the fact that I am going to pay for my meal. When I pay for my meal, I am paying for the food and for the accommodation. When I pay for the accommodation, it is my view that it is up to the manager to accommodate me according to the law. If my time in the restaurant injures my health and I am going to bring a civil suit, I would not bring the civil suit against the person who was smoking; I would bring it against the owner of the place because I paid him for the accommodation. It is the same as a hotel.

Mr. Chairman: The only point I am making is that the place has already been designated nonsmoking. What do you do if something has been designated nonsmoking and you are the person in charge? You make sure there is a sign on the wall. You make sure if anybody smokes, you tell him he cannot.

Do you have to wait until someone asks you to tell that person to stop or do you take other appropriate action? There are three steps that must be followed. I think the second one is silly. You are talking about an area where smoking is prohibited. It is either prohibited or it is not. I am not a lawyer, but I am sure that if Sterling were working for me and if I had not been asked to stop smoking and somebody tried to fine me, he would get me off.

Mr. Sterling: For at least \$100.

Mr. Chairman: For less than \$100.

Mr. McKessock: You are saying that 5a(1)(b) is not necessary?

Mr. Chairman: That is exactly what I am saying. Why is it there at all?

Mr. Sterling: It is up to the committee to decide whether it wants to leave it in or not.

Mr. Chairman: Let us stop now.

Mr. Sterling: Can we deal with section 5 before we fold?

Mr. Chairman: We do not have a quorum.

Mr. Sterling: We had a quorum to start. Do we need a quorum now?

Mr. Chairman: We will come back after question period.

The committee recessed at 12:13 p.m.

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G-29

STANDING COMMITTEE ON GENERAL GOVERNMENT

NON-SMOKERS' PROTECTION ACT

THURSDAY, DECEMBER 18, 1986

Afternoon Sitting



STANDING COMMITTEE ON GENERAL GOVERNMENT

CHAIRMAN: McCague, G. R. (Dufferin-Simcoe PC)
Fontaine, R., (Cochrane North L)
Grier, R. A. (Lakeshore NDP)
Guindon, L. B. (Cornwall PC)
Henderson, D. J. (Humber L)
Lane, J. G. (Algoma-Manitoulin PC)
McKessock, R. (Grey L)
Pollock, J. (Hastings-Peterborough PC)
Sargent, E. C. (Grey-Bruce L)
Sterling, N. W. (Carleton-Grenville PC)
Swart, M. L. (Welland-Thorold NDP)

Substitution:

McGuigan, J. F. (Kent-Elgin L) for Mr. Fontaine

Clerk: Deller, D.

Staff:

Baldwin, E., Legislative Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday, December 18, 1986

The committee resumed at 3:48 p.m. in room 228.

NON-SMOKERS' PROTECTION ACT
(concluded)

Resuming consideration of Bill 71, An Act to protect the Public Health and Comfort and the Environment by Prohibiting and Controlling Smoking in Public Places.

On section 5:

Mr. Chairman: Before we went to lunch we were discussing clause 5a(1)(b). Mr. Sterling, I presume you maintain that should be in there.

Mr. Sterling: Yes. My position is that it is probably better in than out. Then people know what is expected of them under the act, notwithstanding that your argument has some reason behind it.

Mr. Chairman: There may be a further amendment to this section. Who has that?

Mr. Sterling: Mr. McGuigan was concerned that if an employee complained about smoke in the work place, he should be protected. Therefore, he put forward an amendment. Perhaps someone else could move it on his behalf.

Mr. Chairman: Dr. Henderson, if you agree with that amendment, would you please move it?

Mr. Henderson: Is this the amendment to subsection 5(4)?

Mr. Chairman: Yes.

Mr. Henderson: I will be happy to so move.

Mr. Chairman: Mr. Henderson moves that Mr. Pollock's motion amending section 5 of the bill be amended by adding thereto the following subsection:

"(4) No person shall dismiss, discipline, penalize, coerce, intimidate or attempt to coerce or intimidate another person because the other person has made a request under subsection (2)."

Motion agreed to.

Mr. Chairman: Shall Mr. Pollock's amendment, as amended, carry?

Motion agreed to.

Section 5, as amended, agreed to.

On section 6:

Mr. Chairman: Mr. Lanes moves that subsection 6(1) of the bill be struck out and the following substituted therefor:

"(1) Nothing in this act limits the right of an employer or other person in charge of an enclosed public place, or work place or health care facility to further limit or ban smoking on all or part of its premises."

Mr. Sterling: This is virtually the same as the original bill but just plays with the wording slightly. The idea of the section is to limit the right of action against an employer by a smoker who might feel his rights were being abrogated by not being able to smoke on the premises because it was too expensive to put in a ventilation system or whatever. The idea is to prevent a legal conundrum for small businessmen who may be faced with this problem.

Motion agreed to.

Mr. Chairman: Mr. Lane moves that subsection 6(2) be amended by striking out "any enclosed public place in that municipality" in the second and third line and inserting in lieu thereof "enclosed public places, in health care facilities or in any class thereof in that municipality."

Mr. Guindon: This is new. This is not in here.

Mr. Sterling: This is in the original bill, subsection 6(2).

Mr. Guindon: Is that what you just read?

Mr. Lane: Yes. I am amending the original bill. It is already in this.

Mr. Chairman: What does the amendment mean? Perhaps legal counsel can tell us the extent to which this has expanded and what it means.

Mr. Sterling: By definitions we have put in here--under section 4, we talked about places that may not be public places, such as the kitchen or laboratory of a hospital. By including health care facilities, it was allowing the municipality to make bylaws to control smoking to a greater degree in a hospital than in a public place. Is that correct?

Ms. Baldwin: Yes. It expands it to those portions of health care facilities that are not enclosed public places. We dealt earlier with kitchens and lavatories or corridors and with patients' rooms. The municipality might, for example, pass a bylaw that there would be no smoking in any patients' rooms in the hospitals of that municipality. There is authority for the municipality to do so whereas before it was dealing only with enclosed public places.

Mrs. Grier: Why is "work place" not in this amendment, whereas it was in the previous one? Is it not the intent to allow municipalities to further limit smoking in work places?

Ms. Baldwin: That is an error on my part in preparing the motion. I have prepared the motions from the reprint for the convenience of the committee.

Mr. Chairman: I am not with you. Where do you see "work place"?

Ms. Baldwin: I am sorry; "work place" does not appear in subsection 6(2) or in your other one either. It falls to Mr. Sterling to answer the question.

Mr. Sterling: Basically, it is probably worth while to include "work place" in the amendment, if that is the wish of the committee.

Mrs. Grier: As I read subsection 6(1), we are allowing the proprietor of a work place to further limit smoking. I just wondered whether we were deliberately saying that we did not want to give the municipality the right to ban it in what is essentially a private space; that is, a work place. I know that has been the subject of some discussion in the city of Toronto, which has private legislation.

Mr. Sterling: It did not come to light because it was not an issue at that time. No municipality had made any steps towards creating municipal bylaws to control smoking in the work place. That was not the case in December 1985 and basically, I did not anticipate it. If the committee wants to make it "enclosed public places, work place, in health care facilities or in any class thereof in that municipality," that is fine by me.

Mrs. Grier: If we do not add it, does that mean any municipality that wishes to do it is going to have to seek special legislation? I think it will.

Mr. Sterling: I am not sure municipalities have the right at this stage to do it under the Municipal Act, so you may be talking about--

Mrs. Grier: They might have a right now.

Mr. Sterling: Do they have a right now?

Mrs. Grier: I thought the city of Toronto had to get special legislation to enable it to pass its own bylaw.

Mr. Sterling: That is what I mean. Municipalities do not have that right.

Mr. Chairman: Except that it is a public place.

Mr. Sterling: "Work place" is not defined as a public place; so I do not think it is a problem that it is not there. What you are dealing with here is already assumed to be a municipal right. There was no intention in this bill to extend the right to municipalities to make bylaws controlling smoking in the work place. In fact, there should be one law for all Ontario, so that there is not a mix in that area. Notwithstanding that, the Legislature may deem Pr25 to be law. I think the amendment is okay as it stands.

16:00

Mr. Chairman: What does "or in any class thereof" mean?

Mr. Sterling: If I can answer, and maybe I should not, does it not mean you say all arenas are subject to such and such a bylaw, rather than designating Maple Leaf Gardens?

Ms. Baldwin: Yes, or Toronto may have a bylaw with regard to restaurants, but that does not mean it has to have a bylaw with regard to all enclosed public places, restaurants being a class of enclosed public places.

Mr. Chairman: "The council of a municipality may pass a bylaw that further limits or bans smoking in enclosed public places"--no argument with that--"in health care facilities"--no argument with that, but tell me again what "or in any class thereof" means.

Ms. Baldwin: "Or in any class thereof" means, with regard to either enclosed public places or health care facilities, a class of one of those. An example in the case of enclosed public places is restaurants. An example in the case of health care facilities is patients' rooms.

Mr. Henderson: I do not know whether it is very important, but is that not a bit redundant? If you say "limits or bans smoking," you limit smoking by banning it in a class, that is, the class of kitchens or restaurants or something like that. I wonder whether it is necessary to say that, but if you feel it is, who am I to argue? It does not seem to me to add too much to what I take to be already the meaning of that.

Ms. Baldwin: In part of the legislation here, there is provision for permitting smoking in some areas if there is sufficient ventilation to prevent the smoke from being a problem somewhere else. That might be seen as a limit on smoking. I am not too concerned about it one way or the other, though.

Mr. Henderson: If I follow your reasoning, to add that phrase means the prohibition of smoking would override the fact that the adequacy of ventilation makes it feasible. Is that what you are saying?

Ms. Baldwin: I assume that would be so in such a provision.

Mr. Henderson: You are putting that there so somebody cannot stand up and argue that since the room is adequately ventilated, this does not apply.

Ms. Baldwin: There is another possibility, though I do not know that one would ever see a council passing a bylaw that smoking to a certain level is all right and beyond that it is not; I do not know. I suppose it is what you people want.

Mr. Chairman: If what is written here covers the point, and it is not more than I asked, I am content with it as written. Maybe others are not.

Shall subsection 6(2), as amended, carry?

Mr. Guindon: I have a question. It will take only a minute. Where do you make a difference between a work place and a public place? A restaurant is a work place for some people, and here we call it a public place. You call a kitchen a work place.

Mr. Sterling: Subsection 1(a) defines what a public place is. Anything in an institution or in a work place that is open to the public in general would be a public place; anything that is not open to it would be a work place. A store would be a public place. The storerooms at the back would not be a public place; they would be a work place.

Mr. Guindon: Who is going to decide whether there is adequate ventilation?

Mr. Sterling: The medical officer of health.

Mr. Guindon: He is going to be busy.

Mr. Sterling: Perhaps. I think most people can work out an arrangement.

Mr. Chairman: Shall the amendment carry?

Motion agreed to.

Section 6, as amended, agreed to.

On section 7:

Mr. Lane: I have an amendment to section 7.

Mr. Chairman: Mr. Lane moves that section 7 of the bill be amended by striking out "or" in the first line and inserting in lieu thereof "other than subsection 4(2) or 5(2) or section 5a or of" and by adding the following subsection:

"(2) Every person who contravenes subsection 4(2) or 5(2) or section 5a is guilty of an offence and on conviction is liable to a fine of not more than \$5,000."

Mr. Henderson: Can you explain what changes that makes?

Mr. Sterling: Section 7 of the existing bill sets out a fine of \$100 for anybody who breaks a section of the bill or a regulation. My initial thought in putting in that maximum of \$100 was that we were dealing with individuals. Frankly, I did not want to fine any individual who was caught smoking in a nonsmoking area in a restaurant, work place or whatever. I was thinking more of that rather than of dealing with the proprietor or the employer who continues not to make any attempt to meet the aims of the act.

As we have seen with the Sunday shopping issue, the choice in terms of that group of individuals was whether the fine was more expensive than the money they could make on Sunday. For some of them, that was the issue. Therefore, I thought that leaving the fine at \$100 would invite businesses to disregard it and let the \$100 arrive whenever it did. The maximum fine for an offence by an individual is still \$100; the fine for an offence by a proprietor can go up to \$5,000.

Mr. Guindon: I have some difficulty with subsection 7(2), the \$5,000 fine. I feel this bill is going to create conflicts among patients, hospital administrators, managers and employers. I suggest you put it at \$1,000.

Mr. Sterling: You understand that is a maximum? In most cases, where somebody is reasonable and comes in front of a court, the judge imposes the maximum on very few occasions.

Mr. Guindon: I am a little nervous that he will be influenced by that in setting the fine. What you have in mind, I think, is severely fining somebody who is a repeat offender and quite flagrantly an offender, and I am a little concerned that somebody who is more or less an innocent offender, if I may use such a term, a small operator who blunders into trouble, will end up getting stuck with a hefty fine by a judge who figures that since the maximum is \$5,000, he had better be fining somewhere into the thousands where it may not be appropriate.

Does one ever stipulate different fine amounts for repeat and flagrant

offenders? Is that a reasonable thing to do? I have a feeling that \$5,000 is a bit stiff. Some reporter is going to run a story with the headline "Smokers to Face a \$5,000 Fine" or something. It seems a bit heavy to me.

16:10

Ms. Baldwin: As counsel, I can give you two answers to that. One is that, generally, when we set maximum fines, they are very seldom imposed by judges. What judges tend to do, as a matter of practice, is to have a lower fine and when there are subsequent and frequent convictions, to increase the fine up to and, in rare instances, approaching the maximum.

The other answer is that sometimes in our drafting we provide one fine as a maximum for a first offence and another as a maximum for a second or subsequent offence.

Mr. Sterling: I am quite willing to accept the recommendation of the committee. The \$5,000 figure was one I more or less picked out of the air as being significant enough for people to pay attention to.

Mr. Henderson: What if we say up to \$500 for a first offence and up to \$5,000, \$2,000 or whatever thousand you want, for subsequent and flagrant offences?

Mr. Guindon: I want to back up the doctor a bit. What he is saying makes a lot of sense, because in the first case, somebody can go off and be fined only \$100. He can be somebody who is mischievous enough to cause some problems in a hospital or for a manager in a restaurant. All he is going to suffer is a \$100 fine if anything happens, but for not implementing the law, the other guy is going to be charged \$5,000 if he is found guilty. The case of the restaurant is an example, where the manager says no but cannot get the other person to stop.

Mr. Sterling: He has done his job. I do not think he could be charged successfully under the act. If the manager of the restaurant came in and said "Please stop smoking" and the fellow disregarded that, it would be a very difficult case. I think they would say he took reasonable steps to try to prevent the person from smoking.

I think the fines will come in terms of adequate signage and following any regulations about putting in an adequate area for nonsmokers. I do not think the maximum should be too low. I suggest a maximum of \$1,000 on the first offence and a maximum of \$5,000 on any subsequent offences may be an appropriate level you might feel more comfortable with.

Mr. Guindon: Fine. I will leave it up to Mr. Henderson. I definitely feel \$5,000 is too much.

Mr. Chairman: Will somebody make an amendment that applies to the \$5,000 figure?

Ms. Baldwin: I am writing out the amendment with blanks. I will have it available in two seconds.

Mr. Henderson: What about \$300 and \$3,000?

Mr. Guindon: Yes, that sounds good.

Mr. Chairman: Mr. Henderson, do you have an amendment?

Mr. Sterling: May I say this? I do not like to discourage the medical officer of health from enforcing this act, and I suspect he will be a reasonable individual. He will probably give the proprietor at least one or two or three warnings before a charge is ever laid.

It is an expensive operation to take somebody to court. If he is going to take him to court, any enforcement officer, be he with the police or whether it is under another charge or whatever it is, if he does not have an adequate opportunity for a stiff enough fine, there is probably not the impetus to take him there to enforce it. I think \$300 is dropping a little low.

Mrs. Grier: I would use the higher one. I think \$300 is low; \$500 is okay.

Mr. Henderson: Would you say \$500 and \$5,000?

Interjection: I would agree.

Mr. Henderson: Would you say \$500 and \$3,000?

Interjection: That is fine.

Mrs. Grier: It is a form of solution.

Mr. Chairman: Mr. Henderson moves that Mr. Lane's motion to amend section 7 of the bill be amended by striking out subsection 2 and substituting the following therefor:

"(2) Every person who contravenes subsection 4(2) or subsection 5(2) or section 5a is guilty of an offence and on conviction is liable to a fine of not more than \$500 for the first offence and not more than \$3,000 for a second or subsequent offence."

Mr. Chairman: Shall that amendment to the amendment carry? Carried.

Mr. Sterling: I have a question about the new section that was put in by yourselves via Mr. McGuigan concerning an employer who bears down. What level of fine does the committee feel is appropriate: a maximum of \$100 or this section? I believe we have not taken care of that. Is that correct?

Ms. Baldwin: That is correct.

Mr. Sterling: You remember the section where, if an employee puts in a complaint, the employer should not harass the employee because he has put in the complaint? Should it be the heavier fine or the lighter fine? What is the desire of the committee on that?

Mr. Henderson: In a situation where somebody is disciplined or penalized?

Mr. Sterling: Yes.

Mr. Guindon: What section is that?

Mr. Sterling: We put in a new subsection 5(4), which was carried. It was under the heading of Mr. McGuigan's amendments but was put forward by Mr. Henderson.

Under the amendment you have just put forward, you probably want the maximum fine of \$500 for the first offence and \$3,000 for subsequent offences. You are dealing with an employer-employee relationship. The dismissal of an employee would be fairly difficult to prove.

Mr. Guindon: Are we going to enter subsection 5(4) into the category of fines for section 7?

Mr. Sterling: Yes, it has to be there. If there is no sanction, then subsection 5(4) means nothing.

Ms. Baldwin: As it now stands, it would fall under subsection 7(1), the \$100 fine. Is that not correct or have we not mentioned it at all?

Mr. Guindon: We have not mentioned it. It is not in here. Is there not already a provision in the statute that makes it illegal to discipline, penalize, coerce or intimidate somebody?

Mrs. Grier: One section of the Environmental Protection Act says you cannot discipline someone for refusing to pollute. That is the only pollution one.

Mr. Chairman: Legal counsel advises us it is in subsection 7(1).

Ms. Baldwin: As it now stands, it is in subsection 7(1). Given the structure of the bill as you have passed it so far, it is the sort of provision you would have been putting into subsection 7(2).

Mr. Chairman: Which I would maintain is sufficient for the time being.

Mr. Sterling: It does not matter. That is not my principal concern. Mr. McGuigan put that amendment forward and felt strongly about it.

Mrs. Grier: Do we not need to further amend section 7 to include the new subsection 5(4), along with subsection 4(2), subsection 5(2) and section 5a?

Mr. Sterling: If that is the desire of the committee.

Mr. Henderson: As it stands right now, is the fine \$100 or is it the \$500 and \$3,000?

Mr. Chairman: It is \$100.

Mr. Henderson: In other words, if somebody dismisses an employee, he is fined only \$100?

Mrs. Grier: Unless we further amend section 7.

Mr. Henderson: I can certainly think of employees I have wanted to get rid of enough that I would incur a \$100 fine.

Mr. Guindon: I do not think the Labour Relations Act would even get into a case for that. I do not think you can fire anybody for doing something such as that.

Mr. Henderson: I do not feel that strongly about it.

Mr. Guindon: I do not care whether it is \$100 or \$300.

Mr. Sterling: I think it should be under subsection 7(2), especially when the maximum is \$500. That is my own personal feeling. You are probably not ever going to have a subsequent offence. Do you want to amend the amended subsection 7(2)?

Mrs. Grier: I would be happy to move it.

Mr. Chairman: It has to be written up. I do not know what happens now.

Mrs. Grier: I am prepared to write it out. My motion is that subsection 7(2) of the bill be amended by including subsection 5(4).

Mr. Chairman: It has to go in subsections 7(1) and 7(2), I guess. Is that right?

Ms. Baldwin: It has to go in both provisions. If it is the committee members' wish, and they tell me their vote is for subsection 7(2) to be what applies to subsection 5(4) rather than subsection 7(1) applying to subsection 5(4), I will make the appropriate changes.

Mr. Chairman: Is that the committee's wish? Carried.

Section 7, as amended, agreed to.

Mr. Chairman: Mr. Lane moves that the bill be amended by adding thereto the following section:

"7a. This act binds the crown."

Motion agreed to.

On section 8:

Mr. Chairman: Mr. Pollock moves that section 8 of the bill be struck out and the following substituted therefor:

"8. The Lieutenant Governor in Council may make regulations,

"(a) except in respect of specified classes of enclosed public places from the coming into force of this act where, in the opinion of the Lieutenant Governor in Council, their application is impracticable and for the purposes to be met before the exemption applies;

"(b) in respect of the form and manner of posting signs;

"(c) in respect of factors an employer shall take into account in determining whether a person's health is adversely affected for the purpose of subsection 8(1);

Mr. Sterling: I made the amendment in the wording in the bill. I added clause (c) because of the changes to place in terms

the amendment is intended to clean up some of the section 8 of the bill. I added clause (c) because of the changes to previously, in dealing with the work place the implementation of smoking in the work place.

Ms. Baldwin: I just want to ensure that before section 8 carries, either the committee deals with the issue in section 4 or agrees to come back to section 8 if that is necessary for dealing with the issue of section 4.

I have written out two proposals for responding to the concerns that people had this morning with regard to section 4. One of those proposals is two motions, one of which would amend the regulation to make exceptions. I just wanted to call that to the committee's attention before I finally dispose of the regulation making the exceptions.

The Acting Chairman (Mr. Guindon): Do we have to go back to section 4(3)?

Clerk of the Committee: You cannot unless it is so moved.

Ms. Baldwin: Before you deal with section 8, I would like the committee's permission to go back to section 4 and explain the two packages I have for you to consider, reject or come up with alternatives to.

There are three motions that deal with the problem. Two of them go together; they are subsection 4(2) and clause 8(d). The other is subsection 4(3), in which I have tried to deal with a number of the concerns the committee members seem to be expressing in terms of a substantive provision in the bill.

It says two physicians can inform the administrator in writing that they believe a patient's health might be at risk if the patient is not allowed to smoke and that risk would be greater than a risk to a nonsmoking patient who would like a smoke-free room. Where that is the case, and where there is no other room available for the person who wants the smoke-free room, the administrator can permit the person to smoke in the said conditions. I have paraphrased it.

The other two motions have the effect of saying with regard to subsection 4(2) that the patient's right to have a smoke-free room is subject to the regulations. Then it is left to the Lieutenant Governor in Council to prescribe the circumstances under which the administrator may allow smoking in a patient's room, even though there has been a request that there be no smoking. Essentially, that leaves the policy decision to the cabinet rather than our making it here.

Mrs. Grier: I do not quite understand how regulations work. If we do as counsel is suggesting, would that then mean the Lieutenant Governor in Council would have to prescribe regulations for a whole lot of different and specific institutions, or would the regulations merely make one general regulation?

Ms. Baldwin: They would not have to make any regulation at all but if they chose to make a regulation, as it is now, it would be general. The regulation-making power here could be expanded to say "or any class thereof," or it could say "or any class thereof or any particular institution," if that is what was wanted. As it stands now, it is a general regulation-making power.

Mrs. Grier: What is achieved by inserting the right to make these regulations? Are we merely transferring the argument to another venue rather than solving the problem ourselves?

Ms. Baldwin: Yes.

Mrs. Grier: How do we anticipate that it gets resolved in that other venue?

Ms. Baldwin: I do not think that is a question for legislative counsel.

Mr. Sterling: It could be viewed in one of two ways. If the Lieutenant Governor in Council wanted to get around the law dealing with health concerns, it could do so. The cabinet could do so by making the situation easy for a smoker to smoke in a hospital and disregard the nonsmoker's right. It could do that. I do not think that is likely to happen, because the very nature of this amendment deals with health care institutions.

The specific problem raised by Dr. Henderson this morning is probably dealt with, in not too bad a fashion, under subsection 4(3) as proposed or the alternative amendment here. The only thing is that we may not have addressed other problems we have not foreseen. The regulation power always allows some afterthought to deal with some specific examples that one may not foresee at this stage of the game.

16:30

Mr. McGuigan: It is a little more flexible.

Mr. Sterling: Regulations always are for governments.

Mr. McGuigan: If not, they might have to change the law.

Mr. Sterling: That is right. I am not too worried, because in most health care institutions doctors recognize that smoking is a pretty serious problem to the health of the people of Ontario. Therefore, I do not think the demand upon the government to make regulations for them to opt out of this legislation is going to be that great and I do not have much of a problem with either of the two. I think the balance has been struck by legislative counsel in saying you have to have a couple of determined doctors. The onus is still in favour of the nonsmoker: two doctors have to come in and figure out whether anybody is going to suffer on either side of the issue.

Mr. McGuigan: I prefer legislative counsel's first draft. My only misgiving about it is that there are so many different types of institutions out there for which you may have to make some slight changes to that clause; the regulatory route allows you to do it a little more easily. It is frequently six of one and half a dozen of the other.

Mrs. Grier: Can I have explained to me--as I understand it, there is a choice between subsection 4(2) and clause 8(d) or subsection 4(3).

Ms. Baldwin: Is there something else the committee would like me to draft? I would be happy to do it.

Mrs. Grier: I do not understand. We are not doing both of these? We are doing one of them?

Ms. Baldwin: It is one or the other of these.

Interjection: Or none.

Mrs. Grier: I still do not understand the advantages of the subsection 4(3) route as opposed to the other route.

Mr. Sterling: Only that you limit the right of cabinet to opt out of this legislation.

Mrs. Grier: If you adopt subsection 4(3)?

Mr. Sterling: Yes.

Mrs. Grier: I understand that. I am for subsection 4(3).

The Acting Chairman: Counsel, do you want to add something?

Ms. Baldwin: I was simply trying to give the committee choices, one of which would make substantive policy decisions in committee and one that would give the regulation-making authority to the cabinet. I am somewhat reluctant to comment beyond that because that is a policy issue.

Mrs. Grier: The one you feel puts the substantive decision-making here is the subsection 4(3) option?

Ms. Baldwin: Yes.

Mrs. Grier: Thank you. I understand.

Mr. Lane: Are you moving subsection 4(3) then?

Mr. Sterling: It depends on what the committee feels.

Mrs. Grier: Would it help if I moved one of them?

The Acting Chairman: Yes.

Mrs. Grier moves that section 4 of the bill be amended by adding thereto the following subsection:

"(3) Despite subsections (1) and (2), where two physicians inform the administrator of a health care facility in writing that there are reasonable grounds to believe that,

"(a) prohibiting smoking in a patient's room might put the health of a patient who smokes at risk; and

"(b) the risk to the patient who smokes of prohibiting smoking is greater than the risk to the patient who requests a nonsmoking room of exposure to secondhand smoke,

"and there is no other room available for the patient who requests a nonsmoking room, the administrator may permit the patient mentioned in clause (a) above to smoke in the room, subject to whatever conditions the administrator considers appropriate."

The Acting Chairman: Is there any discussion?

Mrs. Grier: Two physicians.

The Acting Chairman: Two physicians?

Ms. Baldwin: He would not trust one physician, would he?

Mr. Henderson: The administrator still has overall authority in this, does he not? I am wondering if it is necessary or if one could simply say the attending physician, knowing that if it is absurd or the attending physician is somebody who just admits you and makes this request, the administrator would have a way of keeping the situation in check.

I am thinking of the fact that physicians already have a sense of having too many administratively driven consultations imposed on them in hospitals. They do not mind consulting for clinical reasons, but they do not like it when there is a procedure that requires consultation. They already have a bunch of those they have to contend with, and I hate to add another one.

Mr. Sterling: My argument back to you is that in some ways this section emasculates the basic thrust of the legislation. Because of the very nature of physicians, I am glad to hear what you say, because I hope that in most cases it will not be necessary and administrators will arrange things in their hospital so this kind of situation does not arise. If you make a procedure too easy, I submit what you will have is effectively no law or no right to the nonsmoking patient.

I know you are trying to be practical, but what I am saying is that you are being too practical.

Mr. Henderson: I will be happy to accept that criticism. It seems to me it is important to try to keep physicians on side with this legislation if we can, and they are right now, I think. The Canadian Medical Association has passed resolutions and has been doing so for a number of years. It would be a shame to draft the legislation in such a way as to make them hostile to a cause they basically want to further and assist with.

Mr. Sterling: In saying there are going to be two, you assume there will be one on each side of the issue.

Mr. Henderson: I hope not. If the attending physician who wants to make this request is going to look around for an attending physician who he thinks is going to support him, it is just going to be kind of a nuisance. There will not be any difficulty finding somebody like that. It is easy enough to find another doctor who will want to be helpful for whatever reason. It is another kind of bureaucratic chore he is going to have to do and will probably resent.

Mrs. Grier: Does it not envisage that your doctor says you need to smoke and my doctor says he does not let his patients smoke? They are the two who have to agree. Do not forget, we are sharing a room.

Mr. Henderson: That is not what I understood from what was said. What I understood was that the physician wanting to exempt his patient, which I think we all agree is going to be rare, is going to have to find another physician, who presumably will have to examine the patient or at least know about the patient in some detail to support him. Then it will go to the administrator, who will look into the situation of the other patients in that room. At that point, these physicians may get into the act, and we are creating something that is more cumbersome and complicated than we realize, for a pretty exceptional and simple situation.

Mr. Sterling: I agree. I think the issue is getting blown out of proportion to what would be a problem. From my point of view, as an advocate of this bill, I would like to make them go before the OMB before they get a

decision, because the harder I make the process, the more likely it is that the problem will not arise. I do not think this is a particularly onerous kind of process.

The Acting Chairman: I do not quite agree with you, because I think the harder you hit that nail with the hammer, sometimes it bends over and you have a whole staff on a floor going bananas for one patient.

Mr. Henderson: Is it in order for me to make an amendment and have a go at that? If you want to defeat it, that is fine.

The Acting Chairman: Mr. Henderson moves that the words "two physicians" be struck out and the words "attending physician" be inserted instead.

16:40

Ms. Baldwin: Excuse me. Would that read, "despite subsections (1) and (2), where a physician informs the administrator"?

Mr. Henderson: It should not be just any doctor. It has to be the patient's doctor, the attending physician--an attending physician.

Ms. Baldwin: Is "attending physician" a meaningful term? It is not to me, and it is not defined in the legislation.

Mr. Henderson: It means this can be initiated only by either the general practitioner who is that patient's doctor or by the chest physician who came in to consult or something. It means that some other doctor who wants to fight the legislation cannot just initiate it out of a wish to be mischievous.

Ms. Baldwin: Could it say "the patient's physician"?

Mr. Henderson: Except that there might be two or three. "Attending physician" covers the patient's physician and the consultant in chest surgery who came in to see the patient. "An attending physician" would be better.

Ms. Baldwin: From a drafting point of view, I am concerned that saying "an attending physician" might create more confusion, partly because of the use of the word--generally when a term is used in statutes, it is defined--and partly because it is not clear which patient's attending physician you are talking about. It is a practical matter, I suppose. I am trying to see whether I can find a quick solution to my drafting problem.

Mr. Henderson: If you say "where a patient's attending physician," that means the physician who is primarily designated as being responsible for that patient.

Ms. Baldwin: At that point, I can just say "where a patient's physician." It is the "attending" that is the problem. It is a nonlegal term.

Mr. Henderson: He could be the patient's physician but not the one who is looking after him in the hospital.

Ms. Baldwin: And that is a problem?

Mr. Henderson: Take a city such as Barrie, where a patient may have a physician but be admitted to a hospital under the care of a vascular

surgeon. That wording would allow his GP, who has nothing to do with his treatment in hospital, to be lobbied by the patient to overrule what his attending physician is ordering. In other words, it would entitle the GP to meddle even though he was not actively involved in the patient's hospital treatment. I am not saying that is very likely.

Mr. Sterling: If this arose, is it not true that what would probably happen is that the administrator would consult with more than one if he does not want to create acrimony in the hospital? He is probably going to phone the GP or anybody who is involved with those patients.

Mr. Henderson: I do not think so. If I were the administrator and got a request from a patient's attending physician to let him smoke, I would want to know whether it was a reasonable request and whether there was some medical basis for it. Then I would check with the physicians of the other patients in that room or with the patients themselves, and if there was no objection, I would probably say okay. If there was an objection, I would go back to the attending physician who asked for it and say, "You really cannot in this setting."

Ms. Baldwin: I am not going to make a big fuss over the word "attending." I would like to read a new subsection 4(3) as proposed to be amended by Dr. Henderson, which straightens out some of my drafting concerns, to make sure it is acceptable to the committee.

The Acting Chairman: Go right ahead.

Ms. Baldwin: It would read:

"(3) Despite subsections (1) and (2), where a patient's attending physician informs the administrator of a health care facility in writing that there are reasonable grounds to believe that,

"(a) prohibiting smoking in the patient's room might put the health of the patient at risk; and

"(b) the risk to the patient of prohibiting smoking is greater than the risk to another patient who requests a nonsmoking room of exposure to secondhand smoke,

"and there is no other room available for the other patient, the administrator may permit the patient mentioned in clause (a) to smoke in the room, subject to whatever conditions the administrator considers appropriate."

Mr. Henderson: If I can point out one thing, that means the patient's attending physician is the one who has to evaluate the effect on the other patient rather than the administrator. As long as that is what you want, that is okay with me, but that is not usually the way it goes. Usually, the patient's doctor worries about the patient; the administrator worries about what happens to other patients.

The Acting Chairman: The more we talk, the more I get confused.

Mr. Henderson: What legislative counsel proposed is not bad. I do not have any strong objections.

Mr. Sterling: That is accepted.

Mrs. Grier: If you accept it, can we have that as the motion rather than as an amendment to an amendment?

Mr. Sterling: That is fine by me.

Mrs. Grier: I withdraw mine, and Dr. Henderson's motion will be the motion before us.

The Acting Chairman: Mrs. Grier withdraws her amendment to subsection 4(3). It will be replaced by Dr. Henderson's amendment to subsection 4(3).

Mr. Henderson: As stated by legislative counsel.

The Acting Chairman: Mr. Henderson moves that section 4 of the bill be amended by adding thereto the following subsection:

"(3) Despite subsections (1) and (2), where a patient's attending physician informs the administrator of a health care facility in writing that there are reasonable grounds to believe that,

"(a) prohibiting smoking in the patient's room might put the health of the patient at risk; and

"(b) the risk to the patient of prohibiting smoking is greater than the risk to another patient who requests a nonsmoking room of exposure to secondhand smoke,

"and there is no other room available for the other patient, the administrator may permit the patient mentioned in clause (a) to smoke in the room subject to whatever conditions the administrator considers appropriate."

Motion agreed to.

On section 4:

The Acting Chairman: We will go back to subsections 4(1) and 4(2), smoking in a health care facility and patients advised of right to no smoking in room.

Mrs. Grier: Do we need to go back to those, having adopted subsection 4(3)?

Mr. Sterling: We have not carried the section.

Mrs. Grier: We do not need to amend them. We merely carry them.

Cler of the Committee: There is an amendment on the floor.

Mrs. Grier: Has that motion been moved?

The Acting Chairman: Yes, it has been moved. Is it the wish of the committee that Mr. Pollock's amendment carry?

Motion agreed to.

Section 4, as amended, agreed to.

On section 8:

The Acting Chairman: Has the amendment been read?

Interjection: Yes.

Motion agreed to.

Section 8, as amended, agreed to.

On section 9:

Mr. Pollock: I have an amendment.

The Acting Chairman: Mr. Pollock moves that section 9 of the bill be struck out and the following substituted therefor:

"9. (1) This act, except section 5 and subsection 6(2) comes into force on the 30th day of June, 1987.

"(2) Section 5 comes into force on the first day of January, 1988.

"(3) Subsection 6(2) shall be deemed to have come into force on the first day of January, 1980."

Mr. Sterling: Rather than have the whole bill come into effect when royal assent is passed, basically this gives some time for various institutions to prepare for the implementation of the legislation. Therefore, the nonsmoking rules in public places would come into effect on June 30, 1987, and in the work place on January 1, 1988. Because of municipal laws that have been passed in the past, there was a request by some of the people who came in front of the committee in September to have a retroactive provision to make certain that this did not do away with existing bylaws. That is why subsection 3 is included.

The Acting Chairman: Is it normal that we do not have royal assent?

Mr. Sterling: Royal assent is still given to the bill, but the effect of those sections does not come into place until those later dates.

Ms. Baldwin: It is very common.

Clerk of the Committee: It is not unusual.

The Acting Chairman: Okay.

Motion agreed to.

Section 9, as amended, agreed to.

Section 10 agreed to.

Title agreed to.

Mr. Sterling: Just before we go on, perhaps because of the original thrust and because of the amendments that have taken place, I put it before the committee that the long name of the bill is An Act to protect the Public Health and Comfort and the Environment by Prohibiting and Controlling Smoking

in Public Places. I submit that we add three words "and the Work Place." Would that be more descriptive?

The Acting Chairman: We have already voted on it.

Mr. Sterling: We will let it go then. Never mind.

Bill, as amended, ordered to be reported.

Mr. Sterling: Thank you very much everybody for being here when there are parties going on in other parts of this building. I promise each and every one of you a Christmas drink.

The committee adjourned at 4:52 p.m.



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